



ARIZONA CRIMES CHART

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- This guide is intended as a **STARTING POINT**. All citations and recommendations should be independently examined

(3)

- **NOTE THE DATE** on the top of the guide, as both Board and Circuit Court precedent governing immigration law rapidly changes

(4)

- This guide **DOES NOT** address misdemeanors perceived to fit into the petty offense exception, *INA § 212(a)(2)(A)(II)*;
- This guide **DOES NOT** address whether certain misdemeanor offenses can constitute aggravated felonies, *Lopez v. Gonzales*, 549 U.S. 47 (2006).

LEGEND

CODE	LAW	EXPLANATION
AGG FEL	INA § 237(a)(2)(A)(iii) (correspond with 101(a)(43)(A)-(U))	An alien may be subject to <i>deportation</i> as an aggravated felon. Section 101 of the INA defines 21 “generic” offenses as aggravated felonies. Aggravated felons are ineligible to apply for most forms of discretionary relief including asylum, voluntary departure, and cancellation of removal. IJs are therefore typically faced with determining whether an alien’s <i>state conviction</i> meets any of the 21 generic aggravated felony federal definitions.
CIMT	INA §§ 212(a)(2)(A)(i)(I), 237(a)(2)(A)(ii)	An alien may be <i>inadmissible or deportable</i> if the crime he committed is determined to be a “Crime Involving Moral Turpitude.” A statute of conviction is a CIMT if: (1) it involves fraud; or (2a) it requires “some form of scienter,” AND (2b) the prohibited conduct is “inherently base, vile, depraved and contrary to the accepted rules of organized society.”
DRUG-CSO	INA §§ 212(a)(2)(A)(i)(II), 237(a)(2)(B)(i)	An alien may be <i>inadmissible or deportable</i> if convicted of an offense “relating to” a controlled substance. The Supreme Court, in <i>Mellouli v. Lynch</i> , 135 S.Ct. 1980 (2015), interpreted the “relating to” provision of section 237 narrowly, as requiring a link between an element of the alien’s conviction to a drug listed on the Federal Schedule. <i>Id.</i> at 1990. The Ninth Circuit has extended this logic to the <i>inadmissibility</i> analog. <i>See Madrigal-Barcenas v. Holder</i> , 797 F.3d 643, 644 (9 th Cir. 2015). Arizona’s drug schedules include at least two (2) drugs that are not on the FedSched—thentylfantyl and benzylfantyl—making the MCA necessary IF the named drug is an element of the offense.
DRUG-RTB-DT	INA §§ 212(a)(2)(C), 237(a)(2)(A)(iii) (correspond with 101(a)(43)(B))	An alien may be <i>inadmissible</i> if the IJ has “reason to believe,” that the alien is, or has aided, a drug trafficker. The alien may be <i>deportable</i> if he has been convicted of a controlled substance offense that corresponds to a generic Controlled Substances Act (“CSA”) offense or the statute contains a trafficking element as defined in <i>Matter of Davis</i> , 20 I&N Dec. 536 (BIA 1992).
DV/CHILD	INA § 237(a)(2)(E)	An alien is <i>deportable</i> if the court of conviction makes a specific determination that he has committed a “crime of violence,” as defined in 18 U.S.C. § 16(a),(b), against a spouse, child or domestic partner. This sectional also makes <i>deportable</i> any alien who has been convicted of a stalking offense or who has violated a protective order at any time after

		his/her admission to the United States. Note that the Ninth Circuit has determined that 18 U.S.C. § 16(b) is void for vagueness. <i>Dimaya v. Lynch</i> , 803 F.3d 1110 (9th Cir. 2015).
FIREARM	INA § 237(a)(2)(C)	<p>An alien is <i>deportable</i> for having been convicted of "purchasing, selling , offering for sale, exchanging, using, owning, possessing or carrying, or of attempting or conspiring any weapon, part or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18 USC) in violation of any law."</p> <p>HOWEVER, AZ statute covers and realistically prosecutes individuals for conduct involving pellet guns. <i>See, e.g., State v. Cisz</i>, No. 1 CA–CR 11–0244, 2011 WL 5964518, at *1, *4-5 (Ariz. Ct. App. Nov. 29, 2011); <i>State v. Larsh</i>, No. No. 1 CA–CR 10–0753, 2011 WL 5964512, at *3-4 (Ariz. Ct. App. Nov. 29, 2011). 18 U.S.C. 921(a)(3) defines "firearm" as an instrument that "expel[s] a projectile by the action of an explosive," and notably does not include compression of air (i.e. the pellet gun). Thus, AZ's definition of "firearm" is categorically broader. <i>See United States v. Aguilera-Rios</i>, 754 F.3d 1105, 1114 (9th Cir. 2014) (definitional elements relevant to categorical approach). It is therefore the author's opinion that Arizona's firearms statutes will NOT currently constitute removable offenses pursuant to INA § 237(a)(2)(C).</p>

METHODOLOGY

CODE	LAW	EXPLANATION	APPLICABILITY
CAT	Respectively: <i>Taylor v. United States</i> , 495 U.S. 575, 601 (1990); <i>Olivas-Motta v. Holder</i> , 746 F.3d 907 (9th Cir. 2013); <i>Lopez-Jacquinde v. Holder</i> , 600 F.3d 1215, 1217 (9th Cir. 2010); <i>Matter of Chairez</i> , 26 I&N Dec. 349, 352 (BIA 2014).	The categorical approach “‘look[s] only to the statutory definition[]’— <i>i.e.</i> , the elements—of [the] . . . prior offense[], and not ‘to the particular facts underlying conviction[].’” <i>Descamps v. United States</i> , 133 S.Ct. 2276, 2283 (2013) (quoting <i>Taylor v. United States</i> , 495 U.S. at 602 (1990)); see <i>Moncrieffe v. Holder</i> , 133 S.Ct. 1678, 1690 (2013). An IJ must assume that “the conviction ‘rested upon [nothing] more than the least of the[] acts’ criminalized,” to determine, “whether <i>even those acts</i> are encompassed by the generic federal offense.” <i>Id.</i> at 1684 (emphasis added) (citation omitted). In identifying this minimum conduct, there must be a “realistic probability, not a theoretical possibility,” that the state applies its statute in the manner suggested. <i>Gonzales v. Duenas-Alvarez</i> , 549 U.S. 183, 184 (2007).	AGG FEL , CIMT , DV-CHILD (only for COV), DRUG-CSO (deportation only) FIREARM (for definitions)
MCA	<i>Shepard v. United States</i> , 544 U.S. 13, 26 (2005); <i>Nijhawan v. Holder</i> , 557 U.S. 29, 41 (2009); <i>Descamps v. United States</i> , 133 S.Ct. 2276 (2013); <i>Medina-Lara v. Holder</i> , 771 F.3d 1106 (9th Cir. 2014); <i>Rendon v. Holder</i> , 764 F.3d 1077, 1097 (9th Cir. 2014), <i>reh’g en banc denied</i> by 782 F.3d 466 (9th Cir. Apr. 2, 2015).	The Immigration Judge must determine if the statute is divisible, that is it “effectively creates ‘several different . . . crimes,’” as opposed to “several different methods of committing one offense,” and then employ the modified categorical approach . <i>Descamps</i> , 133 S.Ct. at 2285 & n.2 (quoting <i>Nijhawan v. Holder</i> , 557 U.S. 29, 41 (2009)); see also <i>Matter of Chairez</i> , 26 I&N Dec. 349, 353 (BIA 2014) (a statute is divisible where multiple discrete offenses are listed, and “at least one, but not all of th[e] listed offenses [] [are] a categorical match to the generic offense.”). A state law contains alternative <i>elements</i> and not merely alternative <i>methods</i> , if a jury has to “unanimously agree [] that [the alien] committed a particular substantive offense contained within the disjunctively worded statute.” <i>Rendon</i> , 764 F.3d at 1081; see also <i>Chairez</i> , 26 I&N Dec. at 353. The MCA allows an IJ to “consult a limited class of documents, such as the indictment and jury instructions to determine which alternative formed the basis of the defendant’s [] conviction.” <i>Descamps</i> , 133 S.Ct. at 2281; see <i>Shepard</i> , 544 U.S. at 26.	AGG FEL , CIMT , DRUG-CSO (deportation only where showing the CSO would be a generic felony trafficking offense), DV-CHILD (only for COV), FIREARM (for definitions)
EOIT	<i>Cazarez-Gutierrez v. Ashcroft</i> , 382 F.3d 905, 912 (9th Cir. 2004); <i>Matter of Davis</i> , 20 I&N Dec. 536 (BIA 1992).	A DRUGS-CSO can turn into an AGG FEL under 101(a)(43)(B) if the statute includes an element of illicit trafficking .	DRUG-CSO (deportation only where showing including an element of illicit trafficking.”)
RTB	<i>Go v. Holder</i> , 640 F.3d 1047, 1052 (9th Cir. 2011)	The IJ needs “probable cause,” to find he or she has (or the CBPO had) a “ reason to believe ,” the alien is a drug trafficker, terrorist etc.	DRUG-CSO (inadmissibility only)

REVIEW-ABILITY OF CRIMINAL DOCUMENTS FOR MCA

<u>DOC TYPE</u>	<u>REVIEW PERMITTED</u>	<u>CONDITIONS OF REVIEW</u>	<u>LAW</u>
Judgment, signed guilty plea, plea agreement, plea colloquy, jury instructions, plea transcript	Yes	No special circ. These are <i>Shepard</i> documents	<i>Shepard v. United States</i> , 544 U.S. 13, 19-20 (2005); <i>Ragasa v. Holder</i> , 752 F.3d 1173, 1176 (9th Cir. 2014); <i>Huerta-Guevara v. Ashcroft</i> , 321 F.3d 883, 888 (9th Cir. 2003) (IJ may correspond charging instrument with other listed documents to determine the elements of conviction)
Charging instrument (complaint, information, indictment)	Yes	NOT charging instrument alone, but in combination with a signed plea agreement or judgment	<i>United States v. Parker</i> , 5 F.3d 1322, 1327 (9th Cir. 1993) (not charging instrument alone); <i>Cheuk Fung S-Yong v. Holder</i> , 600 F.3d 1028, 1036 (9th Cir. 2010) (same); <i>Corona-Sanchez</i> , 291 F.3d 1201, 1211 (9th Cir. 2002) (en banc) (with plea agreement sufficient) <i>superseded on other grounds by</i> U.S.S.G. § 2L1.2 cmt. n. 4.
Abstract of Judgment	Yes	NOT abstract alone but in combination with the charging document, the court may consider the facts alleged in the count	<i>United States v. Kwong</i> , 671 F.3d 872, 879 (9th Cir. 2011) (using abstract generally); <i>Cabantac v. Holder</i> , 736 F.3d 787, 790 (9th Cir. 2013) (with criminal complaint); <i>Ramirez-Villalpando v. Holder</i> , 645 F.3d 1035, 1040 (9th Cir. 2010); <i>Medina-Lara v. Holder</i> , 771 F.3d 1106 (9th Cir. 2014)
Minute Entry	Yes	No special circ.(considered “equally comparable” <i>Shepard</i> doc) If the minute order specifies a count in the charging instrument and says “as alleged in the [charging instrument],” the Court may consider the facts alleged in that count	<i>United States v. Snellenberger</i> , 548 F.3d 699, 701 (9th Cir. 2008) (en banc) (minute orders generally are reliable documents for MCA) <i>Coronado v. Holder</i> , 759 F.3d 977, 986 (9th Cir. 2014) (IJ may consider the Count in the complaint with minute order); <i>Cabantac v. Holder</i> , 736 F.3d 787, 790 (9th Cir. 2013) (per curiam) (same); <i>United States v. Vidal</i> , 504 F.3d 1072 (9th Cir. 2007) (requiring “as alleged in the charging instrument language” to use criminal complaint); <i>Retuta v. Holder</i> , 591 F.3d 1181, 1184-85 (9th Cir. 2010) (same for official minutes).
Docket Sheet	Yes	No special Circ.(considered “equally comparable” <i>Shepard</i> doc) If the docket sheet specifies a count in the charging instrument and says as alleged in the	<i>Torre-Jimenez</i> , 771 F.3d 1163, 1167 (9th Cir. 2014); <i>United States v. Strickland</i> , 601 F.3d 963, 968 (9th Cir. 2010) (uncertified docket sheet inherently reliable); <i>Coronado v. Holder</i> , 759 F.3d 977, 986 (9th Cir. 2014) (docket sheet

		[charging instrument], the Court may consider facts alleged in that count	reliable and citing <i>Cabantac</i> for complaint rule); <i>United States v. Vidal</i> , 504 F.3d 1072 (9th Cir. 2007) (requiring “as alleged in the charging instrument language” to use criminal complaint); <i>Cabantac</i> .
Amended Abstract of Judgment, Minute Order or Docket Sheet OR amended complaint	Yes	Where the IJ is required to or is using the charging instrument in conjunction with these amended documents or an amended complaint, there must be symmetry between the charging instrument and <i>Shepard</i> document regarding the amendment	<i>Cabantac v. Holder</i> , 736 F.3d 787, 790 (9th Cir. 2012) (amended abstract of judgment did not specify the count in the indictment and was therefore not reviewable for this purpose); <i>United States v. Rivera</i> , 658 F.3d 1073, 1078 (9th Cir. 2011) (if amended complaint then plea showing alien pled guilty to the amended charges then it can establish conviction to a generic offense).
Language Tracking Word-for-Word	Yes	Limited to determining a subpart of a statute charged in the indictment and pled guilty to by the alien	<i>United States v. Cabrera-Perez</i> , 751 F.3d 1000, 1005-06 (9th Cir. 2014) (Where the counts of the direct complaint track the language of a specific subpart of a statute and the written plea agreement refers back to that charging instrument or its language, it can be used in the MCA); <i>United States v. Marcia-Acosta</i> , 780 F.3d 1244, 1252-53 & n. 7 (9th Cir. 2015); <i>United States v. Sahagun-Gallegos</i> , 782 F.3d 1094 (9th Cir. 2015).
Police Reports, Stipulations	Generally no	EXCEPTION: May be reviewed under MCA where (1) specifically incorporated by reference into the guilty plea or (2) incorporated by reference into the charging document and stipulated to in the factual basis in the plea	<i>Parilla v. Gonzales</i> , 414 F.3d 1038, 1044 (9th Cir. 2005) (Probable Cause statement in PR incorporated into guilty plea); <i>United States v. Espinoza-Cano</i> , 456 F.3d 1126 (9th Cir. 2006) (police report properly considered under MCA where incorp. into complaint and stipulated to in plea).
PSR/PSIs, Sentencing Hr’g Tr.	No	NONE	<i>United States v. Castillo-Marin</i> , 684 F.3d 914, 919-920 (9th Cir. 2012) (PSR); <i>United States v. Rodriguez Guzman</i> , 506 F.3d 738, 746-47 (9th Cir. 2007) (sentencing Hr’g Tr.).
Testimony by Alien	No	NONE	<i>Cheuk Fung S-Yong v. Holder</i> , 600 F.3d 1028, 1036 (9th Cir. 2010); <i>Perez-Mejia v. Holder</i> , 663 F.3d 403, 410 (9th Cir. 2011)

<u>STAT §</u>	<u>OFFENSE</u>	<u>AGG FEL</u>	<u>CIMT</u>	<u>NOTES (DRUGS-CSO, DRUGS-RTB-DT, DV-CHILD, FIREARM)</u>
PREPARATORY OFFENSES				
§13-1001	Attempt	Yes CAT match, where underlying offense is AGG FEL <i>United States v. Taylor</i> , 529 F.3d 1232, 1238 (9th Cir. 2008) (“Arizona’s definition of attempt is coextensive with the federal definition.”); <i>United States v. Molinar</i> , 2017 WL 5760565 (9th Cir. 2017) (confirming)	Yes CAT match, where underlying offense is CIMT <i>Barragan-Lopez v. Mukasey</i> , 508 F.3d 899 (9th Cir. 2007).	<i>United States v. Gomez-Hernandez</i> , 680 F.3d 1171, 1175 (9th Cir. 2012) (use CAT/MCA to determine whether conviction establishes the elements of the generic definition of “attempt” and that the underlying offense attempted meets the generic definition of the inchoate offense)
§13-1002	Solicitation	Yes, CAT match, where underlying offense is AGG FEL , unless underlying is DRUGS-DTO , DRUGS-CSO charge <i>Barragan-Lopez v. Mukasey</i> , 508 F.3d 899 (9th Cir. 2007)	Yes CAT match, where underlying offense is CIMT . <i>Id.</i>	No Fed Solicitation for DRUGS-DTO , DRUGS-CSO . <i>Leyva-Licea v. INS</i> , 187 F.3d 1147, 1150 (9th Cir. 1999) (CSA covers attempt and conspiracy but NOT solicitation).
§13-1003	Conspiracy	YES , “[A.R.S. 13-1003] contains the same elements as the federal definition... [and] constitutes conspiracy for purposes of the INA.” <i>Banda-Montoya v. Holder</i> , 446 Fed.Appx. 920, 922 (9th Cir. 2011).	Yes, same as attempt	<i>Goldeshtein v. INS</i> , 8 F.3d 645, 647 n.6 (9th Cir. 1993) (looking to underlying offense and conspiracy for two separate CAT/MCA).
§13-1004	Facilitation	NO	Yes, the <i>mens rea</i> required likely meets “some form of scienter,” but only where the underlying conduct being facilitated rises to a CIMT	No Fed Facilitation for DRUGS-DTO , DRUGS-CSO . <i>Leyva-Licea</i> , 187 F.3d at 1150; <i>Mielewczyk v. Holder</i> , 575 F.3d 992 (9th Cir. 2009)

HOMICIDE				
§13-1102	Negligent Homicide	NO , COV requires “volition” <i>U.S. v. Trinidad-Aquino</i> , 259 F.3d 1140 (9th Cir. 2001); <i>Leocal v. Ashcroft</i> , 543 U.S. 1 (2004).	NO , fails <i>mens rea</i> requirement for a CIMIT. <i>In re Fualaau</i> , 21 I&N Dec. 475 (BIA 1996); <i>Ceron v. Holder</i> , 747 F.3d 773, 783 (9th Cir. 2014) (en banc) (CIMIT analysis requires “assessment of both the state of mind and the level of harm required...”).	XXXXXXXXXX
§13-1103	Manslaughter	Yes, MCA as COV provided that the alien was sentenced to 1+ yr and it was not for recklessly causing the death. <i>Fernandez-Ruiz v. Gonzales</i> , 466 F.3d 1121, 1130 (9th Cir. 2006) (recklessness insufficient <i>mens rea</i> for COV); <i>Leocal v. Ashcroft</i> , 543 U.S. at 10.	Yes, CAT approach. <i>Leal v. Holder</i> , 771 F.3d 1140, 1146 (9th Cir. 2014) (holding that recklessness may satisfy the <i>mens rea</i> requirement where there is “grave resulting harm.”); <i>Latter-Singh v. Holder</i> , 668 F.3d 1156, 1161 (9th Cir. 2012).	(b) (5)
§13-1104	Murder 2 nd	Yes, CAT an AGG FEL under 101(a)(43)(A) even where there is only extreme recklessness <i>Matter of M-W-</i> , 25 I&N Dec. 748 (BIA 2012)	Yes, CAT a CIMIT even the extreme reckless portion. <i>Leal v. Holder</i> , 771 F.3d at 1146.	XXXXXXXXXX
§13-1105	Murder 1 st	Yes, CAT an AGG FEL under 101(a)(43)(A) and where alien sentenced to 1+ yr in prison AGG FEL under 101(a)(43)(F)	Yes, CAT a CIMIT	<i>Matter of M-W-</i> , 25 I&N Dec. at 748. One of the first crimes to render an alien deportable. <i>Cazarez-Gutierrez v. Ashcroft</i> , 382 F.3d 905, 915-16 (9th Cir. 2004)
ASSAULT AND RELATED OFFENSES				
§13-1201	Endangerment	No, CAT approach not an AGG FEL COV even if sentenced to 1+ yr. <i>Fernandez-Ruiz v. Gonzales</i> , 466 F.3d 1121, 1130 (9th Cir. 2006)	Yes, CAT approach a CIMIT if felony endangerment and grave harm results. <i>Leal v. Holder</i> , 771 F.3d at 1076 (holding that felony endangerment is CIMIT with “grave	XXXXXXXXXX

		(recklessness insufficient <i>mens rea</i> for COV); <i>Leocal v. Ashcroft</i> , 543 U.S. at 10.	resulting harm.”); <i>Perez-Aguilar v. Holder</i> , 589 F. App'x 841 (9th Cir. 2014).	
§13-1202	Threatening or Intimidating	<p>Yes, requires MCA to determine if it is AGG FEL COV b/c (A)(2) only requires “reckless disregard,” an insufficient <i>mens rea</i> for crimes of violence.</p> <p><i>Leocal v. Ashcroft</i>, 543 U.S. at 10. However (A)(1), (A)(3) could be threats of underlying violent force and therefore AGG FEL COV. <i>United States v. Villavicencio-Burrue</i>, 608 F.3d 556, 561 (9th Cir. 2010).</p>	<p>Yes CAT match, where underlying offense is CIMT.</p> <p><i>Latter-Singh v. Holder</i>, 668 F.3d 1156 (9th Cir. 2012) (where the underlying conduct of the threat criminalized was an assault that, at minimum would result in serious bodily injury and involved a specific intent to injure, threatening was a CIMT); <i>Coquico v. Lynch</i>, 789 F.3d 1049 (9th Cir. 2015). <i>Hernandez-Gonzalez v. Holder</i>, 778 F.3d 793, 802 (9th Cir. 2015) (holding that felony committed with intent to assist gang not a CIMT); <i>Uppal v. Holder</i>, 605 F.3d 712, 716 (9th Cir. 2010) (where no specific intent to injure, special trust relationship or assault to cause harm to persons, death or serious bodily injury, threatening not CIMT); <i>cf.</i></p>	(b) (5)
§13-1203	Assault	<p>MCA where alien sentenced to 1+ yr in prison to determine if conviction necessarily involved the violent force required for AGG FEL COV b/c convictions under (A)(2) have an element of use of force or violent force and <i>mens rea</i>, but (A)(1) and (A)(3) do not.</p> <p><i>U.S. v. Ceron-Sanchez</i>, 222 F.3d 1169 (9th Cir. 2000), <i>overruled on other grounds by Fernandez-Ruiz v. Gonzales</i>, 466 F.3d at 1130. <i>United States v. Cabrera-Perez</i>, 751 F.3d</p>	<p>CAT not a CIMT.</p> <p><i>Matter of Solon</i>, 24 I&N Dec. 239, 241 (BIA 2007), (simple assault generally not a CIMT); <i>Latter-Singh v. Holder</i>, 668 F.3d 1156, 1161 (9th Cir. 2012) (where statute does not require specific intent to injure, special trust relationship or death or serious bodily injury result then aggravating dimension not shown); RAJI §§ 1.0533 (“physical injury”), 1.0539 (“serious physical injury”) 12.03.</p>	(b) (5)

¹ **PRACTICE TIP:** The DV charge is usually lodged in conjunction with a violation of ARS §13-1204.

		1000, 1006 (9th Cir. 2014); <i>Fernandez-Ruiz v. Gonzales</i> .		<i>Planes v. Holder</i> , 652 F.3d 991 (9th Cir. 2011); <i>Galeana-Mendoza v. Gonzales</i> , 465 F.3d 1054, 1060 (9th Cir. 2006) (CIMT); <i>Tokatly v. Ashcroft</i> , 371 F.3d 613, 619 (9th Cir. 2004).
§13-1204	Agg. Assault	MCA ² where alien sentenced to 1+ yr in prison for AGG FEL COV . See Assault AGG FEL box.	MCA to determine both the underlying §13-1203 subsection ³ , AND the subsection of §13-1204 ⁴ . The subsection of 1204 is relevant because some subsections constitute “aggravating dimensions” (“AD”) taking a non-turpitudinous assault to a CIMT . Subsections 1204(A)(1), (A)(3), (A)(4), (causing serious injury) can constitute AD and CIMT , <i>Uppal v. Holder</i> , 605 F.3d 712, 714 (9th Cir. 2010); subsection 1204(A)(2) (use of deadly weapon) can constitute AD and CIMT , <i>Matter of Medina</i> , 15 I&N Dec. 611 (BIA 1976); (A)(8) (on peace officer), can constitute AD and CIMT , <i>Matter of Danesh</i> , 19 I&N Dec. 669 (BIA 1988); where charged with §13-3601 (DV special trust relationship), AD and CIMT, <i>id</i> ; <i>In re Tran</i> , 21 I&N Dec. 291 (BIA 1996).	(b) (5)
§13-1205	Unlawfully administering intox. Liquors, Narcotic Drugs or Dangerous Drugs	5	(b) (5)	XXXXXXXXXXXX

² Subsection (A) requires an underlying §13-1203 charge and thus the MCA analysis for AGG FEL COV pursuant to this provision applies here.

³ It is the authors’ opinion that (A)(3) (including intent to insult) would not constitute CIMT.

⁴ It is the authors’ opinion that (A)(5), (A)(6), (A)(7) (where minimum conduct is violation of protective order with intent to insult) would not constitute a CIMT.

⁵ NOTE this is not an AGG FEL DRUG DTO due to definitions at 21 U.S.C. § 802(A)(11).

			(b) (5)	
§13-1206	Dangerous or deadly assault by prisoner	<p>MCA AGG FEL COV (1) determine the subsection under which the assault occurred because only §13-1203(A)(2) will be a COV. If (A)(2) + sentenced to 1+ yr. in prison + committed either with use of deadly weapon or dangerous instrument it is an AGG FEL. If (A)(2) and alien “intentionally or knowingly inflicted serious physical injury” it is an AGG FEL COV.</p> <p><i>State v. Martinez</i>, 196 Ariz. 451, 462, 999 P.2d 795, 806 (2000) (en banc) (holding that the elements of 13-1206 and 13-1204(A)(1) or (A)(2) are the same but the former is committed by a prisoner making it more serious).</p> <p><i>U.S. v. Ceron-Sanchez</i>, 222 F.3d 1169, 1172-73 (9th Cir. 2000) (holding that ARS § 13-1204(A)(2) is COV where ARS §13-1203(A)(2) is the underlying assault statute).</p>	<p>MCA CIMT where the assault occurred pursuant to § 13-1203(A)(2) and use of deadly weapon or alien intentionally inflicted serious physical injury.</p> <p><i>Given State v. Martinez, see aggravated assault box above.</i></p>	XXXXXXXXXX

§13-1207	Prisoner assault with intent to commit or incite riot	<p>MCA AGG FEL COV (1) determine if alien convicted as participant in riot or (2) because he or she committed an assault pursuant to §13-1203(A)(2) to incite a riot. The former is not an AGG FEL because it can merely involve harm to property. It is the opinion of the authors that the latter can be AGG FEL COV where there is an assault charged because the specific intent is to incite riot.</p> <p><i>United States v. Franetich</i>, 344 F. App'x 416, 418 (9th Cir. Sept. 3, 2009) (WA rioting statute COV under MCA for sentencing guidelines); <i>In Re Tomas Castro</i>, A55 015 887, 2008 WL 2938376, at *2 (BIA June 30, 2008); <i>U.S. v. Johnson</i>, 616 F.3d 85 (2d Cir. 2010).</p>	<p>CAT a CIMT.</p> <p><i>Matter of O-----</i>, 4 I&N Dec. 301, 308 (BIA 1951) (rioting without knowledge that the officials are police officers is non-turpitudinous, but “an individual who engages in a riot and therein assaults a police officer engaged in the lawful practice of his office, knowing the person to be a police officer, appears to this Service to be engaged in an act of wanton lawlessness which is contrary to the duties owed to society.”); <i>Matter of Danesh</i>, 19 I&N Dec. 669 (BIA 1998)</p>	XXXXXXXXXX
§13-1208	Assault; vicious animals	<p>NO. Covers “reason to know” that need not be proven to the jury.</p> <p>RAJI §12.08(1) (2013).</p>	(b) (5)	XXXXXXXXXX

§13-1209	Drive-by shooting	<p>CAT AGG FEL where 1+yr sentence. Necessarily involves the use of physical force, through the use of a gun against occupied motor vehicle occupied structure or at a specific person in a vehicle.</p> <p><i>United States v. Cortez-Arias</i>, 403 F.3d 1111, 1115 (9th Cir.) <i>amended</i>, 415 F.3d 977 (9th Cir. 2005) <i>amended</i>, 425 F.3d 547 (9th Cir. 2005) <i>and amended</i>, 425 F.3d 547 (9th Cir. 2005) (CA statute involving shooting at an <i>occupied structure</i> necessarily a COV as it necessarily involves force).</p>	(b) (5)	
§13-1211	Discharge firearm at structure	<p>MCA to determine if AGG FEL COV. <i>United States v. Martinez-Martinez</i>, 468 F.3d 604, 609 (9th Cir. 2006) (finding that subsection (A) is a COV, requiring residential structure that is not necessarily occupied to be the target under <i>Cortez-Arias</i>, but subsection (B) is not).</p>	(b) (5)	FIREARM see above.
§13-1212	Assault by Prisoner with Bodily Fluids	NOT AGG FEL COV because does not require violent force.	In this authors' opinion this is NOT A CIMT as no requisite scienter required and this is not a base activity.	XXXXXXXXXX
KIDNAPPING AND RELATED OFFENSES				
§13-1302	Custodial Interference	NOT AN AGG FEL	NOT A CIMT	XXXXXXXXXX
§13-1303	Unlawful Imprisonment	NOT AN AGG FEL . "Unlawful imprisonment, [] does not include	Generic Kidnapping, without intent to injure or actual injury or a class of special victims is	CANNOT be DV because it is CAT NOT AN AGG FEL COV .

		<p>violence as an element,” and therefore not 16(a). <i>State v. Henderson</i>, 115 P.3d 601, 609 (Ariz. 2005). The Jury must find restraint “without consent” for this offense, RAJI §13.01. However, the jury need not agree on whether the lack of consent was through physical force, intimidation or deception. <i>Id.</i> Therefore, there is no substantial risk of physical harm either. <i>Rendon v. Holder</i>, 764 F.3d at 1097.</p>	<p>NOT A CIMT <i>a fortiori</i> unlawful imprisonment requiring no violence NOT A CIMT.</p>	
§13-1304	Kidnapping	<p>CAT an AGG FEL COV. CAT an AGG FEL §101(a)(43)(H) if ransom request/transmission involves interstate or inter-country.</p> <p><i>United States v. Marquez-Lobos</i>, 697 F.3d 759, 767 (9th Cir. 2012) (Arizona §13-1304); <i>Delgado-Hernandez v. Holder</i>, 697 F.3d 1125, 1128 (9th Cir. 2012) (even generic CA Kidnapping is an agg fel COV).</p>	<p>MCA a CIMT.</p> <p>Unlike other kidnapping statutes which are general intent statutes, <i>Delgado-Hernandez</i>, 697 F.3d at 1128, Arizona is amongst 28 other states to require the kidnapping be committed for a <i>specific “nefarious purpose.”</i> <i>Marquez-Lobos</i>, 697 F.3d at 764. <i>State v. Eagle</i>, 994 P.2d 395, 399 (Ariz. 2000) (requiring the intent to commit a predicate offense, but not the predicate offense’s commission). This specific intent required satisfies the scienter of <i>Silva-Trevino</i>, and some of the predicate offenses can be considered base vile and depraved. <i>Matter of P</i>, 5 I. & N. Dec. 444, 444 (BIA 1953); <i>see</i> (A)(1) (holding victim as human shield), (A)(2) (holding victim for involuntary servitude), (A)(3) (to inflict death or sexual offense); <i>cf</i> (A)(5) (interfere with performance of a political function). An MCA must be conducted to determine the nefarious purpose found in criminal proceedings, and then decide whether that purpose is base, vile,</p>	<p>DV where 13-3601 charged. Since §13-1304 is CAT an AGG FEL COV as 3601 requires a domestic relationship.</p>

			depraved or contrary to organized societal behavior.	
§13-1305	Access Interference	NOT an AGG FEL COV. Negligence is the minimum <i>mens rea</i> , and therefore does not suffice. criminal negligence. <i>State v. Lefevre</i> , 972 P.2d 1021, 1026 (Ct. App. Ariz. 1998); <i>Fernandez-Ruiz v. Gonzales</i> , 466 F.3d at 1130.	NOT A CIMIT. See AGG FEL box.	XXXXXXXXXX
§13-1306	Unlawfully Obtaining Labor	CAT an AGG FEL pursuant to § 101(a)(43)(K) Correspond with 18 U.S.C. §1589(a).	CAT a CIMIT. The Trafficking Victims Protection Act was enacted to “eradicate modern-day slavery,” and “to combat this intolerable and reprehensible practice.” Clinton, William J., <i>Statement by the President on HR 3244</i> , 2000 WL 1617225 (White House Oct. 30, 2000); Kelly, Ryan, <i>Statement of Acting Deputy Assistant</i> , 2011 WL 4062358 (DOJ Sept. 14, 2011)(expressing the importance of TVPRA as eradicating the “scourge of modern human slavery”).	XXXXXXXXXX
§13-1307	Sex Trafficking	CAT an AGG FEL pursuant to § 101(a)(43)(K) Correspond with 18 U.S.C. §1591.	CAT a CIMIT. <i>Id.</i>	XXXXXXXXXX
§13-1308	Labor Trafficking	MCA an AGG FEL pursuant to § 101(a)(43)(K) (correspond with 18 U.S.C. § 1589(a), (b)). 13-1308(A) is a match for subsection 1589(a)(1), but 1308(a)(2) criminalizes <i>knowingly</i> benefiting from or <i>knowingly</i> receiving the	CAT a CIMIT. <i>Id.</i>	XXXXXXXXXX

		profits of trafficking, while 1589 only punishes such receipt or benefit where it is knowing or in reckless disregard to this fact. RAJI § 13.08, <i>State v. Hoover</i> , 986 P.2d 219 (Ct. App. Ariz. 1998).		
SEXUAL OFFENSES				
§13-1402	Indecent Exposure	CAT NOT AGG FEL. No risk of violence so not COV, and not 101(a)(43)(A) because no element of “abuse.”	CAT NOT a CIMT. <i>Nunez v. Holder</i> , 594 F.3d 1124, 1134 (9th Cir. 2010) (CA statute limiting conviction to when a defendant’s indecent exposure was <i>intentionally</i> sexually motivated was not a CIMT); <i>State v. Sandoval</i> , 857 P.2d 395, 396 (Ct. App. Ariz. 1993) (Arizona does not require any lewd intention, and prosecutes where minors observed an adult exposing genitalia to urinate in public).	XXXXXXXXXX
§13-1403	Public sexual indecency; public sexual indecency on a minor	NOT AGG FEL. Not 101(a)(43)(A) because Arizona does not require the minor to be aware that the conduct is sexual conduct, <i>Arizona v. Malott</i> , 821 P.2d 179 (Ariz. 1991), and the minimum conduct prosecuted in Arizona therefore would not necessarily result in either physical or psychological abuse to the minor. <i>Rebilas v. Mukasey</i> , 527 F.3d 783, 786 (9th Cir. 2008) (citing <i>U.S. v. Baza-Martinez</i> , 464 F.3d 1010, 1012-16 (9th Cir. 2006)).	CAT NOT a CIMT. Same as above. <i>See also Matter of Danesh</i> , 19 I&N Dec., 669, 673 (BIA 1988) (where intentional conduct is an element of a morally reprehensible offense moral turpitude is present)	XXXXXXXXXX

§13-1404	Sexual Abuse (Adult sexual conduct less than penetration conduct w/o consent and Minor fondling of breast w/o consent)	<p align="center">NOT AGG FEL pursuant to §101(a)(43)(A).</p> <p><i>Estrada-Espinoza v. Mukasey</i>, 546 F.3d 1147 (9th Cir. 2008) (en banc) (there is no age difference required between victim and assailant and therefore missing element of generic offense), <i>overruled on other grounds by U.S. v. Aguilla Montes de Oca</i>, 655 F.3d 915 (9th Cir. 2011) (en banc) (per curiam), <i>abrogated by Descamps v. United States</i>, 133 S.Ct. 2276 (2013); <i>U.S. v. Medina Villa</i>, 567 F.3d 507, 513 (9th Cir. 2009) (alternative way to meet the definition by demonstration of (1) statute protects sexual conduct (2) against a minor (3) and conduct is abuse).</p>	(b) (5)
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				(b) (5)
§13-1405	Sexual Contact with a Minor (Penetration of a Minor w/o consent)	<p>NOT AGG FEL pursuant to § 101(a)(43)(A)</p> <p><i>Rivera-Cuartas v. Holder</i>, 605 F.3d 699, 701 (9th Cir. 2010) (ARS § 13-1405 not agg fel pursuant to this provision).</p> <p>NOT AN AGG FEL COV pursuant to § 101(a)(43)(F)</p> <p><i>United States v. Gomez</i>, 757 F.3d 885, 902-03 (9th Cir. 2014) (holding that ARS §13-1405 is missing an element of the generic sexual abuse statute).</p>	<p>(b) (5)</p> <p>See ARS §13-1404 CIMT box.</p>	(b) (5)
§13-1406	Sexual Assault (Penetration of an Adult w/o consent)	CAT AGG FEL pursuant to § 101(a)(43)(A)	<p>CAT a CIMT.</p> <p><i>Schoeps v. Carmichael</i>, 177 F.2d 391, 394 (9th Cir. 1949); <i>Bendel v. Nagle</i>, 17 F.2d 719,</p>	<p>DV offense if charged with §13-3601.</p> <p>The crime is categorically a COV and the charging of 3601 <i>necessarily</i></p>

⁶ **PRACTICE TIP:** A prosecutor may specifically charge violation of ARS §13-118, that the sexual offense was committed for the purpose of sexual gratification, requiring sex offender registration. See generally *State v. Espinoza*, 276 P.3d 55, 59 (Ct. App. Ariz. 2012). This would make a violation of ARS §§ 13-1404, 1405 even more akin to the statute at issue in *Jimenez-Juarez*.

		<p><i>U.S. v. Yanez-Saucedo</i>, 295 F.3d 991, 995-96 (9th Cir. 2002) (WA rape statute lacking element of forcible compulsion but covering force used to prevent resistance, was an agg fel under 101(a)(43)(A)); <i>Castro-Baez v. Reno</i>, 217 F.3d 1057, 1059 (9th Cir. 2000) (same for CA statute where ability to resist has been impaired by drugs); <i>United States v. Riley</i>, 183 F.3d 1155, 1159 (9th Cir. 1999) (same where statute covered impaired ability to resist by deceit).</p> <p>CAT AGG FEL COV pursuant to §101(a)(43)(F)</p> <p><i>United States v. Terrell</i>, 593 F.3d 1084, 1091 (9th Cir. 2010) (13-1406 categorically a “violent felony” under ACCA residual clause); <i>see also State v. Bible</i>, 858 P.2d 1152, 1207 (Ariz. 1993) (en banc) (13-1406 does not contain an element of the use or threatened use of force).</p>	(b) (5)	(b) (5)
§13-1406.01	Sexual Assault of a Spouse	SAME AS §13-1406	SAME AS §13-1406	SAME AS §13-1406
§13-1408	Adultery	NO	NO	NO
§13-1410	Child Molestation (sexual contact w/o consent, more than breast less than penetration)	<p>NEITHER AGG FEL COV NOR AGG FEL §101(a)(43)(A).</p> <p>See boxes §§13-1404, 1405.</p>	(b) (5)	(b) (5)

			(b) (5)	(b) (5)
§13-1417	Continuous sexual abuse of a child	<p>CAT NOT AGG FEL COV or 101(a)(43)(A).</p> <p>Violation of this section requires violation of either §§13-1405, 1406, 1410. §13-1405 will not constitute agg fel under either provision. <i>See above.</i> The trier of fact need not unanimously agree on which underlying statutes amount to a violation of §13-1417. §13-1417(C). Accordingly, the MCA cannot be applied to determine <i>which</i> of the underlying offenses apply, and so it is CAT NOT an AGG FEL. <i>Rendon v. Holder</i>, 764 F.3d 1077, 1097 (9th Cir. 2014).</p>	<p>CAT NOT a CIMT because of the reasoning in the AGG FEL box.</p> <p><i>See also</i> RAJI §14.17.</p>	YES DV CHILD OFFENSE.

§13-1418	Sexual misconduct behavior health professionals	CAT NOT AGG FEL	(b) (5) [REDACTED]	XXXXXXXXXX
§13-1419	Unlawful sexual conduct; correctional employees; prisoners	CAT NOT AGG FEL	See box above.	XXXXXXXXXX
§13-1424	Voyeurism	CAT NOT AGG FEL ⁷	(b) (5) [REDACTED]	
TRESPASS AND BURGLARY				
§13-1502	Criminal Trespass 3 rd	NO	NO	NO
§13-1503	Criminal Trespass 2 nd degree	NO	NO	NO
§13-1504	Criminal Trespass 1 st degree	NO	NO	NO

⁷ **NOTE** there is no provision of INA §101(a)(43) that incorporates electronic voyeurism, 18 USC § 1801.

§13-1505	Possession of Burglary Tools	NOT AGG FEL Not under 101(a)(43)(E) possession of explosives, as defined in 18 USC § 842(h) because it requires <i>stolen</i> explosives.	CAT alone NOT a CIMT unless accompanied by intent to commit a turpitudinous offense so must determine if underlying burg offense is CIMT. <i>Matter of Serna</i> , 20 I. & N. Dec. 579, 584 (BIA 1992).	NO
§13-1506	Burglary in the 3 rd	CAT not an AGG FEL pursuant to 101(a)(43)(G). <i>Descamps v. United States</i> , 133 S.Ct. 2276, 2281 (2013) <i>Hernandez-Cruz v. Holder</i> , 651 F.3d 1094, 1099 (9th Cir. 2011), <i>as amended</i> (Aug. 31, 2011) (to constitute theft offense the generic definition requires entry be either unlawful or unprivileged). Unlawful entry and residential/commercial distinction is a mere means of commission not element and the minimum conduct is therefore remaining in the building.	CAT NOT a CIMT. <i>Hernandez-Cruz v. Holder</i> , 651 F.3d 1094, 1099 (9th Cir. 2011), <i>as amended</i> (Aug. 31, 2011) (commercial burglary is not a CIMT). Commercial burglary is a means of commission of ARS § 13-1506, RAJI §15.06. Statute is therefore not divisible and minimum conduct is not turpitudinous.	NO
§13-1507	Burglary in the 2 nd	MCA AGG FEL pursuant to 101(a)(43)(G) <i>Hernandez-Cruz v. Holder</i> , 651 F.3d 1094, 1099 (9th Cir. 2011), <i>as amended</i> (Aug. 31, 2011) (to constitute theft offense the generic definition requires entry be unlawful). 1507 is divisible as to this element and an unlawful entry/commercial entry <i>may</i> be charged. RAJI 15.07(1), and 1507 is charged for residential buildings. CAT NOT AGG FEL pursuant to 101(a)(43)(F)	MCA a CIMT. Intent to commit a theft is a CIMT, <i>Matter V-Z-S-</i> , 22 I&N Dec. 1338, 1350 (BIA 2000); <i>Matter of Jurado-Delgado</i> , 24 I&N Dec. 29, 33 (BIA 2006); <i>Matter of Grazley</i> , 14 I&N Dec. 330, 333 (BIA 1973), but intent to commit for any other felony would not necessarily be a CIMT. Since these are elements of the offense under <i>Rendon</i> , the MCA should be applied.	NO

		Could have been <i>United States v. Terrell</i> , 593 F.3d 1084, 1093 (9th Cir. 2010) (in ACCA cases, the “ordinary case” involves serious risk of injury pursuant to 8 U.S.C. § 16(b)), but 16(b) unconstitutional <i>Dimaya v. Lynch</i> .		
§13-1508	Burglary in the 1 st	MCA AGG FEL pursuant to 101(a)(43)(G) <i>Hernandez-Cruz v. Holder</i> , 651 F.3d 1094, 1099 (9th Cir. 2011), <i>as amended</i> (Aug. 31, 2011) (to constitute theft offense the generic definition requires entry be either). 1508 is divisible and an unlawful entry/commercial entry <i>may</i> be charged. RAJI 15.08(1). Same analysis as §13-1507	MCA a CIMT. Same as above.	NO
CRIMINAL DAMAGE TO PROPERTY				
§13-1602	Criminal Damage	NO	NO	NO
§13-1603	Criminal Pollution	NO	NO	NO
§13-1604	Agg. Crim. Damage	NO	NO	NO
ARSON				
§13-1702	Reckless Burning	NO ⁸	(b) (5) <i>See Leal v. Holder and Ceron II.</i>	NO
§13-1703	Arson of structure or property	CAT NOT an AGG FEL COV <i>See Jordison v. Gonzales</i> , 501 F.3d 1134, 1135 (9th Cir. 2007), <i>as amended</i> (Oct. 30, 2007) (where	CAT a CIMT <i>Rodriguez-Herrera v. INS</i> , 52 F.3d 238, 239 fn. 2 (9th Cir. 1995) (arson indisputably qualifies as a CIMT); <i>accord Vuksanovic v.</i>	NO

⁸ Note: Not a COV b/c recklessness will not suffice. *See above, Leocal and Fernandez-Ruiz.*

		incendiary can violate statute by setting fire to his own property it is not a crime of violence pursuant to 8 U.S.C. § 16(b)); <i>State v. Newfield</i> , 778 P.2d 1366, 1368 (Ariz. Ct. App. 1989) (1703 charged where defendant set his own property ablaze)	<i>U.S. Att'y. Gen.</i> , 439 F.3d 1308, 1311 (11th Cir. 2006).	
§13-1704	Arson of Occupied Structure	CAT an AGG FEL COV (correspond 8 U.S.C. § 16(b)). <i>In Re Palacios-Pinera</i> , 22 I&N Dec. 434, 436 (BIA 1998) (explaining rationale). Damage must result and therefore falls under 8 U.S.C. § 16(a). <i>United States v. Velasquez-Reyes</i> , 427 F.3d 1227, 1231 (9th Cir. 2005); RAJI §17.04(1).	SAME AS § 13-1703	NO
§13-1705	Arson of Occupied Jail	CAT an AGG FEL COV <i>Palacios-Pinera</i> , 22 I&N Dec. at 436; <i>Velasquez-Reyes</i> ; RAJI § 17.05(2).	SAME AS §§13-1703,1704	NO
THEFT OFFENSES				
§13-1802	Theft	NO⁹	NO A permanent deprivation of property need not be proven to sustain a conviction for “theft by control” under section 13-1802(A)(1), and therefore not considered a “theft” offense and CIMT.	NO

⁹ See *Huerta-Guevara v. Ashcroft*, 321 F.3d 883 (9th Cir. 2003) (ARS § 13-1802 not categorically or under MCA an AGG FEL). (b) (5)

			<i>See Matter of Grazley</i> , 14 I&N Dec. 330 (BIA 1973) (“Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.”); <i>In Re: Hector Lopez-Bustos</i> , A089 444 995 - 2010 WL 4213214, at *2 (BIA Oct. 13, 2010)	
§13-1803	Unlawful Use of Means of Transport	NO <i>United States v. Perez-Corona</i> , 295 F.3d 996, 1001 (9th Cir. 2002).	NO	NO
§13-1804	Theft by Extortion	NO	YES CAT a CIMT <i>Huerta-Guevara v. Ashcroft</i> , 321 F.3d 883, 885 (9th Cir. 2003) (requiring a fraud/permanent taking for CIMT)	NO
§13-1805	Shoplifting	NO <i>See State v. Embree</i> , 633 P.2d 1057, 1059 (Ariz. Ct. App. 1981) (shoplifting not lesser included offense of theft and therefore cannot be INA §101(a)(43)(G)).	(b) (5) A conviction “which requires an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded,” constitutes a crime involving moral turpitude. <i>Matter of Guillermo Diaz-Lizarraga</i> , 26 I&N 847, 854-55 (BIA 2016). ¹⁰ <i>But see: Nava Romero v. Sessions</i> , No. 16-73655, 2018 WL 2453867 (9th Cir. June 1, 2018) (A044-099-246) finding that Arizona’s shoplifting statute does not require a permanent taking and was categorically not a CIMT prior to <i>Diaz-Lizarraga</i> . ¹¹	NO

¹⁰ (b) (5). See generally *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009).

¹¹ See also *Garcia-Martinez v. Sessions*, 886 F.3d 1291 (9th Cir. 2018) re: similar Oregon statute.

§13-1806	Unlawful Failure to Return Rented or Leased Property	NO	NO	NO
§13-1807	Issuing Bad Check	NO	CAT a CIMT <i>Matter of Khalik</i> , 17 I. & N. Dec. 518, 519 (BIA 1980) (“[W]here a statute includes intent to defraud as an essential element of a bad check offense, the crime is one involving moral turpitude.”); Arizona requires a defendant issue the check knowing he does not have sufficient funds, RAJI § 18.07.01	NO
§13-1813	Unlawful Failure to Return Vehicle Subject to Security Interest	NO	NO	NO
§13-1814	Theft of Means of Transport	NO See <i>State v. Dixon</i> , 622 P.2d 501 (Ariz. Ct. App.) (Jury need not be unanimous as to subsection violated as long as they are unanimous as to the theft, Arizona realistically prosecutes all of them and at least two do not involve an <i>intent</i> to deprive).	CAT NOT A CIMT Some of the options are merely temporary takings and are not elements of this offense under <i>Rendon</i> .	NO
§13-1815	Unlawful Use of Power of Attorney	CAT an AGG FEL under 101(a)(43)(G) See generally <i>United States v. Corona-Sanchez</i> , 291 F.3d 1201, 1205 (9th Cir. 2002) <i>overruled on other grounds by United States v.</i>	CAT a CIMT No cases, but this is theft by abuse of power ¹² . See generally 7 Am. Jur. 2d Attorneys at Law § 49 (2015).	NO

¹² A violation requires assigned power of attorney under ARS § 14-5501. In considering whether the conduct is base vile and depraved, the Ninth Circuit has stated that crimes against members of protected classes are considered morally turpitudinous. *Nunez v. Holder*, 594 F.3d 1124, 1131 fn. 4 (9th Cir. 2010).

		<i>Vidal</i> , 504 F.3d 1072 (9 th Cir. 2007) (en banc).		
§13-1816	Unlawful Use, Possession or Removal of Theft Detection Shielding Device	NO	NO	NO
§13-1817	Unlawful Possession, Use or Alteration of a Retail Sales Receipt or Universal Product Code Label	NO	NO	NO
§13-1818	Misappropriation of Charter School Monies	YES CAT AGG FEL where loss to the charter school is \$10,000 or more, pursuant to INA § 101(a)(43)(M).	CAT a CIMT <i>Carty v. Ashcroft</i> , 395 F.3d 1081, 1083 (9th Cir. 2005) (“Crimes of moral turpitude are of basically two types, those involving fraud and those involving grave acts of baseness or depravity.”)	NO
ROBBERY				
§13-1902	Robbery	YES CAT an AGG FEL COV (8 U.S.C. § 16(a) ¹³). <i>United States v. Molinar</i> , 2017 WL 5760565 (9th Cir. 2017) YES CAT an AGG FEL THEFT (101(a)(43)(G)).	CAT a CIMT <i>Huerta-Guevara v. Ashcroft</i> , 321 F.3d 883, 885 (9th Cir. 2003) (requiring a fraud/permanent taking for CIMT)	NO
§13-1903	Agg. Robbery	YES CAT an AGG FEL COV (8 U.S.C. § 16(a)).	CAT a CIMT	NO

¹³ NOTE: The use or threatened use of force is an *element* of this offense. See also RAJI § 19.02(4).

		YES CAT an AGG FEL THEFT (101(a)(43)(G)).	<i>Huerta-Guevara v. Ashcroft</i> , 321 F.3d 883, 885 (9th Cir. 2003) (requiring a fraud/permanent taking for CIMT)	
§13-1904	Armed Robbery	YES CAT an AGG FEL COV (8 U.S.C. § 16(a)). <i>United States v. Molinar</i> , 2017 WL 5760565 (9th Cir. 2017) YES CAT an AGG FEL THEFT (101(a)(43)(G)).	CAT a CIMT <i>Huerta-Guevara v. Ashcroft</i> , 321 F.3d 883, 885 (9th Cir. 2003) (requiring a fraud/permanent taking for CIMT)	NOT A FIREARMS ¹⁴
FORGERY AND RELATED OFFENSES				
§13-2002	Forgery	YES MCA §(A)(1) CAT AGG FEL 101(a)(43)(R) ¹⁵ <i>See generally Vizcarra-Ayala v. Mukasey</i> , 514 F.3d 870, 874 (9th Cir. 2008) (“The essential elements of the common law crime of forgery are “(1) a false making of some instrument in writing; (2) a fraudulent intent; [and] (3) an instrument apparently capable of effecting a fraud.”); <i>Morales-Algeria v. Gonzales</i> , 449 F.3d 1051, 1061 (9th Cir. 2006) (instrument	YES CAT a CIMT <i>Espino-Castillo v. Holder</i> , 770 F.3d 861, 864 (9th Cir. 2014); <i>Jordan v. DeGeorge</i> , 341 U.S. 223, 227-32 (1951) (any crime involving fraud will almost always involve moral turpitude); <i>In Re Kochlani</i> , 24 I. & N. Dec. 128, 130 (BIA 2007) (“[C]rimes that have a specific intent to defraud as an element have always been found to involve moral turpitude.”).	NO

¹⁴ NOTE: (b) (5)

¹⁵ NOTE: This is a class 4 felony and carries presumptive of 2.5 years for first time offenders. (b) (5)
Alberto-Gonzalez v. INS, 215 F.3d 906, 910 (9th Cir. 2000).

		containing false information not enough).		
§13-2003	Criminal Possession of a Forgery Device	<p>(b) (5)</p> <p><i>Morales-Alegria v. Gonzales</i>, 449 F.3d 1051, 1056 (9th Cir. 2006) (we adopt a generic, core definition of forgery which requires intent to defraud and includes a mental state requirement of knowledge of the fictitious nature of the instrument); <i>Vizcarra-Ayala v. Mukasey</i>, 514 F.3d 870, 876 (9th Cir. 2008) (“[A]s the heart of forgery is “a lie about the document itself,” Lafave § 19.7(j)(5)...”).</p>	<p>(b) (5)</p> <p><i>Espino-Castillo v. Holder</i>, 770 F.3d 861, 864 (9th Cir. 2014) (CIMIT where intent to defraud). RAJI § 20.03 supports that the statute is divisible.</p>	NO
§13-2004	Criminal Simulation	NO	<p>(b) (5)</p> <p><i>Espino-Castillo v. Holder</i>, 770 F.3d 861, 864 (9th Cir. 2014) (CIMIT where intent to defraud).</p>	NO
§13-2005	Obtaining a Signature by Deception	NO	NO	NO
§13-2006	Criminal Impersonation	NO	<p>YES CAT a CIMIT</p> <p><i>De Martinez v. Holder</i>, 770 F.3d 823, 825 (9th Cir. 2014)</p>	NO
§13-2007	Unlawful Use of Slugs	NO	NO	NO
§13-2008	Taking ID of Another	NO	MCA CIMIT to determine if the person is real or fictitious.	NO

			<i>Ibarra-Hernandez v. Holder</i> , 770 F.3d 1280 (9th Cir. 2014) ¹⁶ (b) (5)	
§13-2009	Agg Taking ID of Another	NO	MCA CIMT to determine if the person is real or fictitious. <i>Ibarra-Hernandez v. Holder</i> , 770 F.3d 1280 (9th Cir. 2014)	NO
§13-2011	Admission Tickets, Fraudulent Creation or Possession	NO ¹⁷	YES CAT a CIMT <i>Espino-Castillo v. Holder</i> , 770 F.3d 861, 864 (9th Cir. 2014)	NO
CREDIT CARD FRAUD				
§13-2102	Theft of a Credit Card or Obtaining a Credit Card by Fraudulent Means	CAT an AGG FEL, INA § 101(a)(43)(G) <i>United States v. Corona-Sanchez</i> , 291 F.3d 1201, 1205 (9th Cir. 2002) (adopting 7 th Circuit's definition of theft as "a taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent.").	YES MCA a CIMT (A)(1) will not be a CIMT. <i>See State v. Harris</i> , 655 P.2d 1339, 1340 (Ariz. Ct. App. 1982) (minimum conduct of 1802), but (A)(2), (3) will be because they involve the permanent intent to deprive. <i>See Matter of Grazley</i> , 14 I&N Dec. 330, 333 (BIA 1973).	NO

¹⁶ NOTE: This decision was before *Rendon v. Holder*.

¹⁷ Maximum penalty is a class 1 misdemeanor.

§13-2103	Receipt of Anything of Value Obtained by Fraudulent Use of a CC	CAT an AGG FEL INA § 101(a)(43)(M) <i>See Nijhawan v. Holder</i> , 129 S. Ct. 2294, 2301 (2009) (offense must involve loss to victim is a factual determination but must be \$10,000); RAJI § 21.03 (amount of loss must be determined).	CAT a CIMT RAJI § 21.03 (Jury must find BRD that defendant knew that his proceeds were derived from fraud); <i>Carty v. Ashcroft</i> , 395 F.3d 1081, 1083 (9th Cir. 2005) (“Crimes of moral turpitude are of basically two types, those involving fraud and those involving grave acts of baseness or depravity.”); <i>Matter of Chouinard</i> , 11 I&N Dec. 839 (BIA 1966).	NO
§13-2104	Forgery of a CC	YES, CAT AGG FEL, 101(a)(43)(R) <i>Morales-Alegria v. Gonzales</i> , 449 F.3d 1051, 1056 (9th Cir. 2006) (we adopt a generic, core definition of forgery which requires intent to defraud and includes a mental state requirement of knowledge of the fictitious nature of the instrument); <i>Vizcarra-Ayala v. Mukasey</i> , 514 F.3d 870, 876 (9th Cir. 2008) (“[A]s the heart of forgery is “a lie about the document itself,” Lafave § 19.7(j)(5)...”).	CAT CIMT <i>Goldeshtein v. I.N.S.</i> , 8 F.3d 645, 648 (9th Cir. 1993) (equating “evil intent” with an “intent to defraud.”); <i>Navarro-Lopez v. Gonzales</i> , 503 F.3d 1063, 1065 (9th Cir. 2007) <i>overruled by United States v. Aguila-Montes de Oca</i> , 655 F.3d 915 (9th Cir. 2011) <i>abrogated by Descamps v. United States</i> , 133 S.Ct. 2276 (2013); <i>Carty v. Ashcroft</i> , 395 F.3d 1081, 1083(9th Cir. 2005).	NO
§13-2105	Fraudulent Use of CC	YES CAT AGG FEL, 101(a)(43)(M) <i>See Nijhawan v. Holder</i> , 129 S. Ct. 2294, 2301 (2009) (offense must involve loss to victim is a factual determination but must be \$10,000); <i>see generally Ferreira v. Ashcroft</i> , 390 F.3d 1091 (9th Cir. 2004).	CAT a CIMT <i>Tijani v. Holder</i> , 628 F.3d 1071, 1076 (9th Cir. 2010); <i>see also Tall v. Mukasey</i> , 517 F.3d 1115, 1119 (9th Cir.2008) (CIMT even where “the fraudster intentionally seeks and obtains something of value by means of his misrepresentation.”)	NO
§13-2106	Possession of Machinery,	YES, AGG FEL, 101(a)(43)(M)	(b) (5)	NO

	Plate or other contrivance or incomplete CC	But only if charged as Class 6 Felony, and not Class 1 misdemeanor.		
§13-2107	False Statement as to Financial Condition or ID	YES CAT an AGG FEL, 101(a)(43)(M). Only where loss to victim is \$10,000+.	CAT a CIME <i>Tijani v. Holder</i> , 628 F.3d 1071, 1076 (9th Cir. 2010); <i>see also Tall v. Mukasey</i> , 517 F.3d 1115, 1119 (9th Cir.2008) (CIME even where “the fraudster intentionally seeks and obtains something of value by means of his misrepresentation.”)	NO
§13-2108	Fraud by Person Authorized to Provide Goods or Services	Same as 2107	Same as 2107	NO
BUSINESS AND COMMERCIAL FRAUD				
§13-2202	Deceptive Business Practices	NO	NO	NO
§13-2203	False Advertising	NO	NO	NO
§13-2204	Defrauding Secured Creditors	NO	NO	NO
§13-2205	Defrauding Judgment Creditors	NO	NO	NO
§13-2206	Fraud in Insolvency	NO	NO	NO
§13-2207	Receiving Deposits in an Insolvent Financial Institution	NO	NO	NO
§13-2208	Usury	NO	NO	NO
ORGANIZED CRIME				
§13-2301	Racketeering	MCA AN AGG FEL 101(a)(43)(J) <i>Murillo-Prado v. Holder</i> , 735 F.3d 1152, 1158 (9th Cir. 2013) (“Each of	MCA YES Check underlying offense	(b) (5)

		the stated charges for racketeering [must] ha[ve] a federal analogue.”).		
§13-2302	Making Extortionate Extensions of Credit	NO	NO	NO
§13-2303	Financing Extortionate Extensions of Credit	NO	NO	NO
§13-2304	Collection of Extensions of Credit by Extortionate Means	NO	NO	NO
§13-2306	Possession of Altered Property	NO Lack of intent to defraud.	NO Despite recklessness, not <i>Leal</i>	NO
§13-2307	Trafficking in Stolen Property	MCA an AGG FEL 101(a)(43)(G) <i>United States v. Corona-Sanchez</i> , 291 F.3d 1201, 1205 (9th Cir. 2002) (theft is “taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership...”). Arizona can charge this offense in the first degree, where the jury must find that defendant participated in the theft, <i>State v. DiGuilio</i> , 835 P.2d 488 (Ariz. Ct. App. 1992), or second degree, where the jury need not find this element only that defendant was reckless in regard to whether property was stolen, <i>State v. Noriega</i> , 697 P.2d 341, 342 (Ariz.	MCA a CIMT where 1st degree <i>See RAJI § 23.07.02.; see box §13-2002.</i>	NO

		Ct. App. 1984). The former is an agg fel, but not the latter.		
§13-2308.01	Terrorism			<i>See Khan v. Holder</i> , 584 F.3d 773 (9th Cir. 2009).
§ 13-2309	Bribery of Participants in Professional or Amateur Games	(b) (5) <i>Matter of Gruenangerl</i> , 25 I & N Dec. 351, 355 (BIA 2010) (recognizing “the fundamental conceptual difference in purpose” between commercial bribery and bribery of a public official forecloses inclusion under 101(a)(43)(R)).	(b) (5) The intent required is to induce someone to commit a deceitful act, akin to misprision of a felony, <i>Robles-Urea v. Holder</i> , 678 F.3d 702 (9th Cir. 2012). All bribery cases at the Board address public official bribery. <i>See e.g. Matter of V-</i> , 4 I&N Dec. 100 (BIA 1950).	NO
§13-2310	Fraudulent Schemes and Artifices	CAT AN AGG FEL 101(a)(43)(M)(i) <i>See Kawashima v. Holder</i> , 132 S. Ct. 1166, 1179 (2012) (“Congress did not intend to include tax offenses in § 1101(a)(43)(M)(i), but instead drafted that provision to address fraudulent schemes against private victims...”).	(b) (5) <i>Matter of A-----</i> , 7 I. & N. Dec. 626, 627 (BIA 1957) (where fraud an element of the offense in commercial business fraud it can involve moral turpitude.); <i>see box §13-2002</i> .	NO
§13-2311	Fraudulent Schemes and Practices	CAT AN AGG FEL 101(a)(43)(M)(i) <i>See Kawashima v. Holder</i> , 132 S. Ct. 1166, 1179 (2012).	SEE § 13-2310	NO
§13-2312	Illegal Control of/illegally conducting an enterprise	(b) (5)		

		<p><i>Morales-Alegria v. Gonzales</i>, 449 F.3d 1051, 1056 (9th Cir. 2006) (we adopt a generic, core definition of forgery which requires intent to defraud and includes a mental state requirement of knowledge of the fictitious nature of the instrument). <i>State v. Jones</i> 218 P.3d 1012 (Ariz. Ct. App. 2009) (Crime of fraudulent schemes and practices requires proof of specific intent to defraud.)</p> <p>(3) (b) (5)</p>		
§13-2316	Computer Tampering	<p>(b) (5)</p>	<p>(b) (5)</p> <p><i>See In Re Kochlani</i>, 24 I. & N. Dec. 128, 131 (BIA 2007).</p>	<p>(b) (5)</p>
§13-2317	Money Laundering	<p>(b) (5)</p> <p><i>See Chowdhury v. I.N.S.</i>, 249 F.3d 970, 973 (9th Cir. 2001)</p>	<p>(b) (5)</p> <p><i>Goldeshtein v. I.N.S.</i>, 8 F.3d 645, 648 (9th Cir. 1993)</p>	<p>(b) (5)</p>
§13-2319	Human Smuggling	<p>(b) (5)</p>	<p>(b) (5)</p>	<p>(b) (5)</p>

			<i>Matter of Tiwari</i> , 19 I&N Dec. 875 (BIA 1989).	
OBSTRUCTION OF PUBLIC ADMINISTRATION				
§13-2407	Tampering with a Public Record	<p>(b) (5)</p> <p><i>Morales-Alegria v. Gonzales</i>, 449 F.3d 1051, 1056 (9th Cir. 2006) (we adopt a generic, core definition of forgery which requires intent to defraud and includes a mental state requirement of knowledge of the fictitious nature of the instrument); <i>Vizcarra-Ayala v. Mukasey</i>, 514 F.3d 870, 876 (9th Cir. 2008) (“[A]s the heart of forgery is “a lie about the document itself,” Lafave § 19.7(j)(5)...”).</p>	<p>CAT CIMT</p> <p><i>Goldeshtein v. I.N.S.</i>, 8 F.3d 645, 648 (9th Cir. 1993) (equating “evil intent” with an “intent to defraud.”); <i>Matter of Kochlani</i>, 24 I&N Dec. 128, 129-31 (BIA 2007) (even using a spurious trademark <i>likely</i> to deceive others constitutes a CIMT).</p>	NO
§13-2409	Obstructing Criminal Investigations or Prosecutions	<p>(b) (5)</p> <p><i>Robles-Urrea v. Holder</i>, 678 F.3d 702, 710 (9th Cir. 2012) (citing <i>Matter of Espinoza-Gonzalez</i>, 22 I. & N. Dec. 889, 894 (BIA 1999)).</p>	<p>(b) (5)</p>	NO

ESCAPE				
§13-2502	Escape 3 rd	NO	NO	NO
§13-2503	Escape 2 nd	NO	NO	NO
§13-2504	Escape 1 st	<p>CAT an AGG FEL, 101(a)(43)(F), correspond with (8 U.S.C. § 16(a)).</p> <p>Requires the use of physical force or the threatening or use of deadly weapon. <i>See Camacho-Cruz. v. Holder</i>, 621 F.3d 941, 943 (9th Cir. 2010) (threatened use of physical force enough); <i>Bolanos v. Holder</i>, 734 F.3d 875, 878 (9th Cir. 2013) (threatened use of dangerous instrument suffices).</p>	<p>YES CAT CIMT</p> <p><i>See Matter of Sanudo</i>, 23 I&N Dec. 968, 972-73 (BIA 2006) (battery on a law enforcement officer is morally turpitudinous if it contains an element of bodily harm); <i>Matter of Medina</i>, 15 I&N Dec. 611 (BIA 1976) (use of a deadly weapon).</p>	<p>NOT FIREARMS</p> <p>“Deadly Weapon,” defined ARS § 13-3101(A)(1) as anything designed for lethal force, including a “firearm.” “firearm” is defined at ARS §13-3101(A)(4) and includes airsoft guns which is not coextensive with the generic firearms definition, 18 U.S.C. § 922.</p>
§13-2505	Promoting Prison Contraband	■	(b) (5)	■
§13-2506	FTA 2 nd	NO	NO	NO
§13-2507	FTA 1 st	<p>CAT an AGG FEL, 101(a)(43)(Q), ONLY IF the <i>underlying</i> felony is punishable by five years or more in prison.</p>	NO	NO
§13-2508	Resisting Arrest	<p>MCA an AGG FEL under INA § 101(a)(43)(F), 18 U.S.C. § 16(a)).</p> <p>Statute is divisible. RAJI § 25.08.02. Determine if (A)(2) was involved. <i>United States v. Flores Cordero</i>, 723 F.3d 1085, 1086 (9th Cir. 2013) (holding that the term physical force as used in Arizona’s resisting arrest statute did not match the definition of physical force of 18 U.S.C. § 16(a) and was therefore categorically not a crime of violence, but</p>	<p>(b) (5)</p> <p>■</p>	■

		remanding to determine if alien had been convicted pursuant to (A)(2)).		
§13-2509	Resisting an Order Directing, Regulating or Controlling Motor Vehicle	NO	NO	NO
§13-2511	Hindering Prosecution 2 nd	NO Misdemeanor offense	CAT a CIMT <i>Matter of Rivens</i> , 25 I. & N. Dec. 623 (BIA 2011) (“[A]n accessory[-after-the-fact] conviction is ... one for a crime involving moral turpitude when the aid is knowingly provided <i>to help the principal escape prosecution or punishment</i> for a base or vile crime.” (emphasis added)); <i>State v. Johnson</i> , 156 P.3d 445 (Ariz. Ct. App. 2007) (Hindering prosecution in AZ is the statutory embodiment of the common-law offense of accessory-after-the-fact).	NO
§13-2512	Hindering Prosecution 1 st	CAT an AGG FEL under INA § 101(a)(43)(S) Statute has the specific intent to obstruct justice and if the alien sentenced to at least one year, meets the definition. <i>Matter of Gallardo</i> , 25 I&N Dec. 838 (BIA 2012) (“A crime ‘relate[s] to obstruction of justice’ within the meaning of INA § 101(a)(43)(S)...if it includes the critical element of an affirmative and intentional attempt, motivated by a specific intent, to interfere with the process of justice, irrespective of the existence of an ongoing criminal investigation or proceeding.”)	CAT a CIMT <i>See Rivens and Johnson.</i>	NO

§13-2513	Fail Discharge Duties	NO	NO	NO
BRIBERY				
§13-2602	Bribery of Public Servant or Party Officer	YES Not commercial bribery, 101(a)(43)(R) or bribery of a Witness, 101(a)(43)(S), but is obstruction of justice under INA § 101(a)(43)(S) (specific intent to interfere with the process of justice). <i>Matter of Gallardo</i> , 25 I&N Dec. 838 (BIA 2012).	CAT a CIMT All bribery cases at the Board address public official bribery are CIMT. <i>See e.g. Matter of V-</i> , 4 I&N Dec. 100 (BIA 1950); <i>Matter of H-</i> , 6 I&N Dec. 358 (BIA 1954)	NO
§13-2603	Trading in Public Office	Same as 2602	Same as 2602	NO
§13-2605	Commercial Bribery	YES provided the alien is sentenced to at least one year in prison, INA §101(a)(43)(R)	YES Same as 2602	NO
§13-2606	Offer to Exert Improper Influence on Public Officer or Employee for Consideration	NO	NO <i>See Matter of H-</i> , 6 I&N Dec. 358, 361 (BIA 1954) (referencing <i>Matter of S-</i> , 2 I&N Dec. 225 (BIA 1944) (requiring the act of deceit “obstruct lawful government functions.”).	NO
PERJURY & RELATED OFFENSES				
§13-2702	Perjury	YES <i>Matter of Martinez-Recinos</i> , 23 I&N Dec. 175 (BIA 2001) (perjury on material matter is aggravated felony pursuant to INA § 101(a)(43)(S)). Alien must be sentenced to one year	YES <i>Matter of W-</i> , 5 I&N Dec. 759 (BIA 1954); <i>Matter of B</i> , 5 I&N Dec. 405 (BIA 1953); <i>Matter of P-</i> , 4 I&N Dec. 373 (BIA 1951); <i>cf. Matter of R-</i> , 2 I&N Dec. 819 (BIA 1947) (Canadian perjury statute not CIMT because no materiality requirement); <i>Kaneda v. United States</i> , 278 F. 694 (9th Cir. 1922).	NO
§13-2703	False Swearing	(b)(5)		

		False swearing is <i>only</i> prosecuted in AZ “if one knowingly makes a false sworn statement during the course of an official proceeding.” <i>Franzi v. Sup. Ct. in and for Pima Cnty.</i> , 679 P.2d 1043 (Ariz. Ct. App. 1984). Thus, statute fits with <i>Matter of Martinez-Recinos</i> , 23 I&N Dec. 175 (BIA 2001), or <i>Matter of Gallardo</i> . Alien must be sentenced to one year	<i>Matter of R-</i> , 2 I&N Dec. 819 (BIA 1947) (Canadian perjury statute not CIMT because no materiality requirement)	
§13-2704	Unsworn Falsification	NO This is a misdemeanor and, excluding <i>Lopez</i> issue, an alien can NEVER be sentenced to one year.	YES Requires materiality.	NO
INTERFERENCE WITH JUDICIAL AND OTHER PROCEEDINGS				
§13-2802	Influencing a Witness	YES, INA § 101(a)(43)(S) Statute has the specific intent to obstruct justice and if the alien sentenced to at least one year, meets the definition. <i>Matter of Gallardo</i> , 25 I&N Dec. 838 (BIA 2012) (“A crime ‘relate[s] to obstruction of justice’ within the meaning of INA § 101(a)(43)(S)...if it includes the critical element of an affirmative and intentional attempt, motivated by a specific intent, to interfere with the process of justice, irrespective of the existence of an ongoing criminal investigation or proceeding.”)	YES CAT a CIMT <i>See Matter of H-</i> , 6 I&N Dec. 358, 361 (BIA 1954) (referencing <i>Matter of S-</i> , 2 I&N Dec. 225 (BIA 1944) (requiring the act of deceit “obstruct lawful government functions.”).	NO
§13-2803	Receiving a Bribe by a Witness	CAT an AGG FEL under 101(a)(43)(S)-obstruction; CAT	CAT a CIMT	NO

		also an AGG FEL 101(a)(43)(S)- witness bribery Same as 2802	Same as 2802; <i>See also Matter of V-</i> , 4 I&N Dec. 100 (BIA 1950); <i>Mendez-Mendez v. Mukasey</i> , 525 F.3d 828 (9th Cir. 2008).	
§13-2804	Tampering with a Witness	CAT an AGG FEL under 101(a)(43)(S). Same as 2802; <i>See also Salazar-Luviano v. Mukasey</i> , 551 F.3d 857 (9th Cir. 2008).	(b) (5) <i>See Soto-Rodriguez v. Holder</i> , 607 F.App'x 648 (9th Cir. Apr. 14, 2014) (holding moral turpitude does not inhere in WA statute prohibiting witness tampering).	NO
§13-2805	Influencing a Juror	CAT an AGG FEL under 101(a)(43)(S) Same as 2802	(b) (5)	NO
§13-2806	Receiving a Bribe by a Juror	CAT an AGG FEL under 101(a)(43)(S) Same as 2802		NO
§13-2807	Jury Tampering	CAT an AGG FEL under 101(a)(43)(S) Same as 2802		
§13-2808	Misconduct by a Juror	NO This statute is not divisible, RAJI § 28.08, and (A)(1) does not require intentional conduct or specific intent		NO
§13-2809	Tampering with Physical Evidence	CAT an AGG FEL under 101(a)(43)(S) Same as 2802		NO
§13-2810	Interfering with Judicial Proceedings	NOT an AGG FEL , no specific intent.		NO
§13-2812	Unlawful Grand Jury Disclosure	NO	NO	NO

§13-2813	Unlawful Disclosure of an Indictment	NO	NO	NO
§13-2814	Simulating Legal Process	NO	NO	NO
OFFENSES AGAINST PUBLIC ORDER				
§13-2902	Unlawful Assembly	NO	NO	NO
§13-2903	Riot	NO ¹⁹ Reckless is the only <i>mens rea</i> that satisfies this statute, RAJI § 29.03, and cannot satisfy the <i>mens rea</i> required for a COV, <i>Fernandez-Ruiz v. Gonzales</i> , 466 F.3d 1121, 1130 (9th Cir. 2006) (recklessness insufficient <i>mens rea</i> for COV); <i>Leocal v. Ashcroft</i> , 543 U.S. at 10.	NO <i>Matter of O--</i> , 4 I&N Dec. 301 (BIA 1951), cited with approval by <i>Marmolejo-Campos v. Gonzales</i> , 503 F.3d 992 (9th Cir. 2007) (en banc).	NO
§13-2904	Disorderly Conduct	CAT NOT an AGG FEL Statute is not divisible, RAJI § 29.04 and Arizona minimally proscribes “throwing a half full soda can at [a] victim,” under this statute, <i>In re John M.</i> , 36 P.3d 772 (Ariz. Ct. App. 2001).	NO See the minimum conduct in Agg Fel box. <i>Cf. Matter of Bermudez</i> , 12 I&N Dec. 225 (BIA 1967) (CA disorderly conduct statute constitutes CIMT because it proscribed homosexual activity, which at the time, was considered turpitudinous behavior).	CAT NOT a FIREARM RAJI 29.04 (“firearm” defined as including explosive reaction and action of expanding gasses), broader than the generic definition at 921(a)(3).
§13-2905	Loitering	NO	NO	NO
§13-2906	Obstructing Highway or Other Public Thoroughfare	NO	NO	NO
§13-2907	False Reporting	NO	NO	NO
§13-2907.01	False Reporting to Law Enforcement	NO	CAT a CIMT	NO

¹⁹ NOTE: (b) (5)

			<i>Matter of Jurado</i> , 24 I&N Dec. 29, 34-35 (BIA 2007) (unsworn false statement to law enforcement with the intent to mislead, even where not material, constituted a CIMT).	
§13-2907.02	False Report of Child Abuse to LEA	NO	<p>CAT a CIMT</p> <p>Same as 2907.01; <i>Nunez v. Holder</i>, 594 F.3d 1124, 1131 (9th Cir. 2010) (“A review of BIA and Ninth Circuit precedent reveals that non-fraudulent crimes of moral turpitude almost always involve an intent to harm someone, the actual infliction of harm upon someone, or an action that affects a <i>protected class of victim</i>.”)</p>	<p>NOT DV/CHILD</p> <p><i>Actus reus</i> here does not involve violence, but intentionally or knowingly making a false report of child abuse.</p>
§13-2907.03	False Report of Sexual Assault of Spouse to LEA	NO	<p>CAT a CIMT</p> <p>Same as 2907.02</p>	<p>NOT DV/CHILD</p> <p><i>Actus reus</i> here does not involve violence, but intentionally or knowingly making a false report of sexual abuse.</p>
§13-2907.04	False Report of Abuse of Vulnerable Adult to LEA	NO	<p>CAT a CIMT</p> <p>Same as 2907.02</p>	NO
§13-2907.05	False Report of Offense by Correction or Probation Officer	NO	<p>CAT a CIMT</p> <p><i>Matter of Jurado</i>, 24 I&N Dec. 29, 34-35 (BIA 2007) (unsworn false statement to law enforcement with the intent to mislead, even where not material, constituted a CIMT).</p>	NO
§13-2908	Criminal Nuisance	NO	NO	NO
§13-2909	Residential Picketing	NO	NO	NO
§13-2910	Cruelty to Animals or Poultry	NO	(b) (5)	NO

			<i>See generally Matter of Ortega-Lopez, 26 I&N Dec. 99 (BIA 2013) (violation of 7 USC § 2156(a)(1) for sponsoring or exhibiting an animal in an animal fighting venture is a CIMT because it involves the knowing harm to these sentient beings).</i>	
§13-2910.01	Animal Fighting	NO	CAT a CIMT <i>Matter of Ortega-Lopez, 26 I&N Dec. 99 (BIA 2013) (violation of 7 USC § 2156(a)(1) for sponsoring or exhibiting an animal in an animal fighting venture is a CIMT because it involves the knowing harm to these sentient beings).</i>	NO
§13-2910.02	Presence at Animal Fight	NO	CAT a CIMT <i>Matter of Ortega-Lopez, 26 I&N Dec. 99 (BIA 2013) (violation of 7 USC § 2156(a)(1) for sponsoring or exhibiting an animal in an animal fighting venture is a CIMT because it involves the knowing harm to these sentient beings).</i>	NO
§13-2910.03	Cockfighting	NO	CAT a CIMT <i>See generally rationale in Matter of Ortega-Lopez, 26 I&N Dec. 99 (BIA 2013) (dogfighting).</i>	NO
§13-2910.04	Presence at Cockfighting	NO	CAT a CIMT	NO
§13-2911	Interference with the Peaceful Conduct of Educational Institutions	NO	NO	NO
§13-2915	Preventing Use of Telephone in Emergency	NO	NO	NO

§13-2916	Use of Electronic Communication to Threaten or Harass	NO	NO	MCA a DV/CHILD offense If charged with (A)(2) and ARS § 13-3601.
§13-2917	Public Nuisance	NO	NO	NO
§13-2918	Interference with Emergency Transmission on citizen's band radio frequency	NO	NO	NO
§13-2919	Automated Phone Solicitation	NO	NO	NO
§13-2920	Advertisements and Required Preamble Message for Phone Information Services	NO	NO	NO
§13-2921	Harassment	NO	NO	■
§13-2921.01	Agg. Harassment	NO	NO	DV/CHILD Where accompanied by an ARS § 13-3601 offense.
§13-2922	Interference with Transmissions on Public Safety Land Mobile Radio Frequencies	NO	NO	NO
§13-2923	Stalking	CAT NOT an AGG FEL COV No element the use of force and 16(b) is void for vagueness.	CAT a CIMT <i>See Zavaleta-Gallegos v. INS</i> , 261 F.3d 951 (9th Cir. 2001); <i>Matter of Ajami</i> , 22 I&N Dec. 949, 952 (BIA 1999) (finding Michigan Aggravated Stalking statue a CIMT where the defendant had to "act willfully, embark on a course of conduct, as opposed to a single act and must cause another to feel great fear.")	(b) (5) ■

EAVSDROPPING AND COMMUNICATIONS

§13-3002	False or Forged Messages	NO	NO	NO
§13-3003	Opening, Reading or Publishing Sealed Letter of Another Without Authority	NO	NO	NO
§13-3005	Interception of Wire, Electronic and Oral Communications	NO	NO	NO
§13-3006	Divulging Communication Service Information	NO	NO	NO
§13-3008	Possession of Interception Devices	NO	NO	NO
§13-3009	Duty to Report to Law Enforcement Officers	NO	NO	NO
§13-3011	Disclosing Confidential Information Relating to Ex Parte Order	NO	NO	NO
§13-3016	Government Agency Access to Contents of Stored Electronic Communication	NO	NO	NO
§13-3019	Surreptitious Photographing, Recording or Viewing	NO	(b) (5) On Behalf of Applicant, 2008 WL 5236918, at *2 & fn. 1 (DHS, AAO Sept. 30, 2008)	NO
WEAPONS & EXPLOSIVES				

§13-3102	Misconduct Involving Weapons	NOT AN AGG FEL, 101(a)(43)(E) Prohibited weapon is defined in 13-3101. Even minimum conduct for a firearm could include a pellet gun which is not a firearm pursuant to 8 USC 921(a)(3). <i>See “firearm” box.</i> MCA AN AGG FEL, 101(a)(43)(F) if (A)(9)	CAT NOT CIMT Even the (A)(9) offense requires that the defendant have knowledge of possession and not criminal or specific intent that structure was occupied. <i>State v. Tyler</i> , 718 P.2d 214 (Ariz. Ct. App. 1986).	CAT NOT FIREARMS <i>See “firearms” box</i>
§13-3103	Misconduct Involving Explosives	NO	NO	CAT AN OFFENSE “relating to” a “destructive device”
§13-3104	Depositing Explosives	CAT an AGG FEL, 101(a)(43)(F), (E)	CAT a CIMT	CAT AN OFFENSE “relating to” an “destructive device” Correspond ARS § 13-3101(a)(3), with 18 U.S.C. §
§13-3107	Unlawful Discharge of Firearms	NO	NO	NO <i>See “firearms” box</i>
§13-3109	Sale or Gift of Firearm to Minor	NO	NO	NO <i>See “firearms” box</i>
§13-3110	Misconduct Involving Simulated Explosive Devices	NO	NO	NO <i>See “firearms” box</i>
§13-3113	Adjudicated Delinquent; Firearm Possession	NO	NO	NO <i>See “firearms” box</i>
PROSTITUTION				
§13-3201	Enticement of Persons for	NO	NO	INA § 212(a)(2)(D)(ii)

	Purpose of Prostitution			“An alien who directly or indirectly procures or attempts to procure or procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or received in whole or in part, the proceeds of prostitution.” Must be within 10 years of the date of the application for a visa. There is a waiver available. INA § 212(h).
§13-3202	Procurement by False Pretense of Person for Purpose of Prostitution	NO	NO	INA § 212(a)(2)(D)(ii)
§13-3203	Procuring or Placing Persons in House of Prostitution	NO	CAT a CIME ²⁰ <i>See Matter of Lambert</i> , 11 I&N Dec. 340 (BIA 1965) (conviction for letting rooms with knowledge they were to be used for prostitution was a conviction for a CIME); <i>Matter of P—</i> , 3 I&N Dec. 20 (BIA 1947) (keeping house of prostitution is a CIME).	INA § 212(a)(2)(D)(ii)
§13-3204	Receiving Earning of Prostitute	CAT NOT an AGG FEL, 101(a)(43)(K)(i) “Prostitution” in AZ is any sexual conduct for a fee, <i>see State v. Rodgers</i> , 655 P.2d 1348 (Ariz. Ct. App. 1982), but the federal generic definition requires “engaging in promiscuous sexual intercourse for hire,” 22 C.F.R. § 40.24(b); <i>Depasquale v. Gonzales</i> , 196 F. App’x 580, 582 (9th Cir. 2006);	CAT a CIME <i>See Matter of Lambert</i> , 11 I&N Dec. 340 (BIA 1965) (conviction for letting rooms with knowledge they were to be used for prostitution was a conviction for a CIME); <i>Matter of P—</i> , 3 I&N Dec. 20 (BIA 1947) (keeping house of prostitution is a CIME).	INA § 212(a)(2)(D)(ii)

²⁰ NOTE: (b) (5)

		<i>Kepilino v. Gonzales</i> , 454 F.3d 1057 (9th Cir. 2006).		
§13-3205	Causing Spouse to Become Prostitute	CAT NOT an AGG FEL 101(a)(43)(K). See 3204 above	CAT a CIMT See 3204	INA § 212(a)(2)(D)(ii)
§13-3206	Taking Child for Purpose of Prostitution	CAT NOT an AGG FEL, INA § 101(a)(43)(A) , sexual abuse of a minor, EVEN if charged as class 2 felony (minor under 15 years). This is a strict liability offense. <i>But see Blakely v. Washington</i> , 542 U.S. 296 (2004) (jury must unanimously determine the child's age to determine the felony grade).	CAT NOT A CIMT No scienter	INA § 212(a)(2)(D)(ii) CAT NOT DV/CHILD (no scienter)
§13-3207	Detention of Persons in House of Prostitution Debt	CAT an AGG FEL, INA § 101(a)(43)(K)(i), (iii) (correspond with 18 U.S.C. § 1581(a)) “Peonage” defined at 42 U.S.C. § 1994.	CAT a CIMT. The Trafficking Victims Protection Act was enacted to “eradicate modern-day slavery,” and “to combat this intolerable and reprehensible practice.” Clinton, William J., <i>Statement by the President on HR 3244</i> , 2000 WL 1617225 (White House Oct. 30, 2000); Kelly, Ryan, <i>Statement of Acting Deputy Assistant</i> , 2011 WL 4062358 (DOJ Sept. 14, 2011)(expressing the importance of TVPRA as eradicating the “scourge of modern human slavery”).	INA § 212(a)(2)(D)(ii)
§13-3208	Keeping or Residing in House of Prostitution; Employment in Prostitution	MCA an AGG FEL, INA § 101(a)(43)(K)(i) (correspond with 18 U.S.C. § 1581(a)). Maintaining or Operating the house of prostitution ARS § 13-3208(B) is the AGG FEL.	CAT a CIMT <i>See Matter of Lambert</i> , 11 I&N Dec. 340 (BIA 1965) (conviction for letting rooms with knowledge they were to be used for prostitution was a conviction for a CIMT);	INA § 212(a)(2)(D)(ii)

			<i>Matter of P—</i> , 3 I&N Dec. 20 (BIA 1947) (keeping house of prostitution is a CIME).	
§13-3209	Pandering	CAT an AGG FEL, INA § 101(a)(43)(K)(i), (iii) (correspond with 18 U.S.C. §§ 1584, 1590)	CAT a CIME See 3208.	INA § 212(a)(2)(D)(ii)
§13-3210	Transporting Persons for Purpose of Prostitution or Other Immoral Purpose	Same as 3209 NOTE: this is NOT CAT an AGG FEL, INA § 101(A)(43)(K)(ii), because the transportation is not necessarily committed for commercial advantage.	Same as 3209	INA § 212(a)(2)(D)(ii)
§13-3212	Child Prostitution	CAT not an AGG FEL Statute not divisible. RAJI § 32.12A, B and minimum conduct broader than generic offense.	CAT a CIME <i>See Matter of Lambert</i> , 11 I&N Dec. 340 (BIA 1965) (conviction for letting rooms with knowledge they were to be used for prostitution was a conviction for a CIME); <i>Matter of P—</i> , 3 I&N Dec. 20 (BIA 1947) (keeping house of prostitution is a CIME); <i>Nunez v. Holder</i> , 594 F.3d 1124, 1134 (9th Cir. 2010).	INA § 212(a)(2)(D)(ii); CAT NOT a DV/CHILD Missing the force/age element. Even 3212(B) covers 16-18 year old minors whom the perpetrator <i>should have known</i> was a minor, which precludes the COV finding under <i>Leocal</i> .
§13-3214	Prostitution	CAT not an AGG FEL	Same as 3208	INA § 212(a)(2)(D)(ii)
GAMBLING²¹				
§13-3303	Promotion of Gambling	CAT NOT AN AGG FEL, INA § 101(a)(43)(J) (correspond with 18 U.S.C. § 1955) §13-3303(A)(1), (2) are means of commission and not elements. While 1 may constitute an agg fel, 2 would not. Since the statute is overbroad	NO <i>See Matter G—</i> , 1 I&N Dec. 59 (BIA 1941); <i>Matter of S—</i> , 9 I&N Dec. 688 (BIA 1962);	

²¹ NOTE: One whose income was principally derived from illegal gambling during the required good moral character period, is precluded from establishing good moral character. INA § 101(f)(4).

		and indivisible it cannot constitute an agg fel.		
§13-3304	Benefit from Gambling	NO	NO	NO
§13-3305	Betting and Wagering	NO	NO	NO
§13-3306	Possession of a Gambling Device	NO	NO	NO
§13-3307	Possession of Gambling Records	NO	NO	NO
§13-3312	Crane Games	NO	NO	NO
DRUG OFFENSE²²				
§13-3402	Possession & Sale of Peyote	<p>MCA an AGG FEL, 101(a)(43)(B)</p> <p>Statute is divisible. <i>Compare</i> RAJI § 34.022, 34.021 with 34.023.</p> <p>Possessing, selling and transferring peyote constitutes an Agg Fel, as it is a trafficking offense for a drug listed on Sched. I of the CSA, but solicitation would not be, <i>Leyva-Licea v. INS</i>, 187 F.3d 1147, 1150 (9th Cir. 1999).</p>	<p>MCA a CIMIT</p> <p>Possession of Peyote unlikely a CIMIT. However, it is the author's opinion that knowingly possessing for sale, transfer or solicitation of these two likely a CIMIT. <i>See Atlantic Richfield Company v. Guerami</i>, 820 F.2d 280,282 (9th Cir. 1987) ("There can be nothing more depraved or morally indefensible than conscious participation in the illicit drug traffic."); <i>see also, Matter of Y-L-</i>, 23 I&N Dec. 270, 275 (BIA 2002) (Congress has recognized the harmful effect to society from drug offenses in the clear distinctions and disparate statutory treatment it has drawn between drug offenses and other crimes).</p>	<p>(b) (5)</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
§13-3403	Possession & Sale of a Vapor-Releasing Substance	<p>CAT not an AGG FEL</p> <p>Since solicitation offenses are not covered by the CSA, <i>Leyva Licea</i>,</p>	<p>CAT NOT a CIMIT</p> <p>The statute is indivisible.</p>	<p>NO</p> <p>The statute is indivisible and would need to be sale or transfer.</p>

²² PRACTICE TIP: recall, that both Arizona's "dangerous" drug schedule and "narcotics" drugs schedule include drugs that are not listed on the CSA, making a MCA analysis necessary when it comes to determining the specific drug utilized.

	Containing a Toxic Substance	and the solicitation and trafficking offenses are listed as means not elements, <i>compare RAJI §34.03(A3), with RAJI § 34.03(A1)</i> , the statute is indivisible and overbroad.		
§13-3404	Sale of Precursor Chemicals	NO	NO	NO
§13-3404.01	Possession or Sale of Precursor Chemicals, Regulated Chemicals, Substances or Equipment	MCA an AGG FEL, 101(a)(43)(B), but only (C) Divisible. RAJI § 34.04.01(A)-(D). This subsection only covers CSA drugs and is for sale	MCA a CIMT But only (C). This subsection only covers CSA drugs and is for sale	MCA DRUGS-CSO But only (C). This subsection only covers CSA drugs. RTB-DT Consult facts
§13-3405	Possession, use, production, sale or transportation of <i>marijuana</i>	MCA an AGG FEL, 101(a)(43)(B) Same analysis regarding interstate importation as §13-3408. Note that here the drug is necessarily going to be a substance on the CSA as marijuana is a FedSched I drug. 21 C.F.R. § 1308.11(23).	CAT a CIMT See CIMT § 13-3421 box below	CAT DRUGS-CSO Marijuana is a FedSched I and so conviction here “relates to” a CSA drug ²³ . RTB-DT Consult facts
§13-3406	Possession, Use, administration, acquisition, sale, manufacture or transportation of <i>prescription-only drugs</i>	PROB NOT AGG FEL, 101(a)(43)(B) Same analysis as §13-3408.	CAT a CIMT See CIMT § 13-3421 box below	PROB NOT CSO Same analysis as § 13-3408 RTB-DT Consult facts
§13-3407	Possession, use, administration, acquisition, sale manufacture or	PROB NOT AGG FEL, 101(a)(43)(B) Same analysis as §13-3408.	CAT a CIMT See CIMT § 13-3421 box below	PROB NOT CSO Same analysis as § 13-3408

²³ NOTE: This chart does not address the petty offense exception.

	transportation of <i>dangerous drugs</i> ²⁴			RTB-DT Consult facts
§13-3407.01	Manufacturing Meth causing harm to child	CAT an AGG FEL, 101(a)(43)(B) Both actus reus and the drug are CSA covered. 21 C.F.R. § 1308.12(d)(2).	CAT a CIMENT See CIMENT § 13-3421 box below and <i>Nunez v.</i> <i>Holder</i> .	CAT DRUGS-CSO Methamphetamine is a Fed Sched II drug. RTB-DT Consult facts
§13-3408 ²⁵	Possession, use, administration, acquisition, sale, manufacture or transportation of <i>narcotic drugs</i>	(b) (5) <i>Vera-Valdevinos v.</i> <i>Lynch</i> , 649 F.App'x 597 (9th Cir. May 11, 2016); <i>State v. Prescott</i> , 2016 WL 611656 (Ariz. Ct. App. Feb. 16, 2016)	CAT a CIMENT See CIMENT §13-3421 box below.	(b) (5) RTB-DT Consult the facts.
§13-3409	Involving or Using Minors in Drug Offenses	CAT NOT AGG FEL, 101(a)(43)(B). Statute is divisible, but (A)(1) does not have a trafficking element. Actus	CAT NOT a CIMENT See agg fel box.	DRUGS-CSO (A)(1)- YES - if the underlying offense relates to a substance controlled by the

²⁴ Arizona's "dangerous drugs" covers cathinone and any cathinomimetic substances that are derived from cathinone, ARS §§ 13-3401(6)(c)(xiii), (xiv) two substances which the CSA does not.

²⁵ See *Vera-Valdevinos v. Lynch*, 649 F.App'x 597 (9th Cir. May 11, 2016) & *State v. Prescott*, No. 1 CA-CR 15-0188, 2016 WL 611656 (Ariz. Ct. App. Feb. 16, 2016) (indicating it was not necessary to prove the particular drug, and therefore the drug is a means not an element→no MCA). See also *United States v. Tavizon-Ruiz*, 196 F. Supp. 3d 1076, 1079 (N.D. Cal. 2016), appeal dismissed (Oct. 18, 2016) (extending *Vera-Valdevinos* to invalidate removal orders for respondents with 212 charges, not just those "otherwise legally entitled to be in the United States" [with 237 charges]). At time of latest update to this chart, there is still no published authority directly addressing Arizona's statutes and no change or clarification to RAJI. We have received BIA decisions in favor of termination and against.

		<p>reus of § 13-3409(A)(2) is indivisible and minimally includes solicitation to sell or transfer. Solicitation offenses are not covered by the CSA. <i>Leyva-Licea v. INS</i>, 187 F.3d 1147, 1150 (9th Cir. 1999). Arizona's statute is therefore overbroad and indivisible.</p>		<p>Federal Schedule. See RAJI § 34.091(1). (A)(2)- YES- if the prohibited substance under MCA is a controlled substance on the CSA. See RAJI §34.092(1).</p> <p>NOT RTB-DT</p> <p>See agg fel box</p>
§13-3411	<p>Possession, use or sale of marijuana, peyote, prescription drugs, dangerous drugs or narcotic drugs in a drug-free school zone</p>	<p>MCA an AGG FEL, 101(a)(43)(B), but only (A)(3).</p> <p>The specific drug and the actus reus (i.e. possession or use) not elements of the offense for ARS §§ 13-3411(A)(1),(2). Pursuant to these sections, defendant can be charged as a petty possessor, triggering the petty possession exception in <i>Moncrieffe</i>. See <i>Matter of Pima Cnty. Delinquency Action No. 79577</i>, 774 P.2d 1371 (Ariz. Ct. App. 1989). However, manufacturing dangerous drugs, if drug specified is a CSA drug, can constitute an agg fel for trafficking.</p>	<p>MCA (A)(3) a CIMIT</p> <p>Same MCA analysis as agg fel box, but if manufacturing and CSA drug found then it is a CIMIT. See CIMIT §13-3421 box below.</p>	<p>(b) (5)</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
§13-3415	<p>Possession, manufacture, delivery and advertisement of drug paraphernalia</p>	<p>■</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>(b) (5)</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

				offense of possession of drug (b) (5)
§13-3421	Using building for sale or manufacture of dangerous or narcotic drugs	CAT NOT an AGG FEL, 101(a)(43)(B). Named Drug NOT an element of the offense, <i>RAJI</i> §34.21.01, AND AZ Sched includes non-Fed Sched drugs. Ergo, statute is indivisible and overbroad. Also, “using” a building is not a prohibited CSA activity, 21 U.S.C. § 841.	CAT a CIMT <i>See Matter of Y-L-</i> , 23 I&N Dec. 270 (BIA 2002) (Congress has recognized the harmful effect to society from drug offenses in the clear distinctions and disparate statutory treatment it has drawn between drug offenses and other crimes); <i>See Atlantic Richfield Company v. Guerami</i> , 820 F.2d 280,282 (9th Cir. 1987) (“There can be nothing more depraved or morally indefensible than conscious participation in the illicit drug traffic.”)	(b) (5)
IMITATION SUBSTANCE DRUG OFFENSES				
§13-3453	Manufacture or Distribution of imitation	NO²⁶	NO	NO

²⁶ Imitation drugs are NOT covered by the CSA.

	controlled substance			
§13-3454	Manufacture or Distribution of imitation prescription-only drugs	NO	NO	NO
§13-3455	Manufacture or Distribution of Imitation over the counter drugs	NO	NO	NO
§13-3456	Possession or Possession with Intent to Use Imitation Controlled Substance	NO	NO	NO
§13-3457	Possession or Possession with Intent to Use Imitation Prescription only Drugs	NO	NO	NO
§13-3458	Possession or Possession with Intent to Use an Imitation Over the Counter Drug	NO	NO	NO
§13-3459	Manufacture of Certain Substances and Drugs by Certain Means	NO	NO	NO
OBSCENITY				
§13-3502	Production, Publication, Sale, Possession and Presentation of Obscene Items	NO	(b) (5) See Matter of D--, 1&N Dec. 190 (BIA 1942) (mailing obscene materials not a CIMT)	NO

§13-3504	Coercing Acceptance of Obscene Articles or Publications	NO	(b) (5)	NO
§13-3506	Furnishing Harmful or Harmful Items to Minors	NO	(b) (5)	NO <i>Matter of Velazquez-Herrera</i> , 24 I. & N. Dec. 503, 503 (BIA 2008) (“the term ‘crime of child abuse’ means any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a person under 18 years old or that impairs such a person’s physical or mental well-being, including sexual abuse or exploitation”) <i>cf.</i> RAJI § 35.06(1).
§13-3507	Public Display of Explicit Sexual Materials	NO	NO	NO
SEXUAL EXPLOITATION OF CHILDREN				
§13-3512	Obscene or Indecent Telephone Communication to Minors for Commercial Purposes	NO	NO	NO
§13-3552	Commercial Sexual Exploitation of a Minor	(b) (5) Jury need not unanimously decide on which actus reus committed for the commercial exploitation. <i>See generally</i> RAJI § 35.52. All actus rei	CAT a CIMT <i>See Nicanor-Romero v. Mukasey</i> , 523 F.3d 992 (9th Cir. 2008) (citing <i>New York v. Ferber</i> , 102 S.Ct. 3348 (1982), <i>overruled on other grounds by Marmolejo-Campos v. Holder</i> , 558 F.3d 903 (9th Cir. 2009) (en	MCA CHILD ABUSE <i>Matter of Velazquez-Herrera</i> , 24 I. & N. Dec. 503, 503 (BIA 2008) (“the term ‘crime of child abuse’ means any offense involving an intentional, knowing, reckless, or criminally

		are covered by the generic definitions. §3552(a)(1) (correspond with 18 U.S.C. § 2551(a), §3552(a)(2) (correspond with same); § 3552(a)(3) (correspond with 18 U.S.C. § 2251(b)), §3552(a)(4) (correspond with 18 U.S.C. § 2252(a)(1)). The only issue is whether the inclusion of the areola or the nipple of the female breast is broader than the generic definition of “sexually explicit conduct” at 18 U.S.C. §2256(a)(2)(A),(B). A meaningful argument can be made that Arizona does not prosecute such behavior and that the legislative intent embodied by 18 U.S.C. § 2256(a)(2)(A)(v) was to include non-genital exposure.	banc)); <i>see also Nunez v. Holder</i> , 594 F.3d 1124 (9th Cir. 2010).	negligent act or omission that constitutes maltreatment of a person under 18 years old or that impairs such a person’s physical or mental well-being, including sexual abuse or exploitation”). Offense covers children up to age of 18, however jury must agree BRD on age of the victim pursuant to <i>Blakely v. Washington</i> , 542 U.S. 296 (2004). If victim is 14 or younger, any sexual act with that minor <i>per se</i> impairs the minor’s physical or mental well-being. <i>See United States v. Baron-Medina</i> , 187 F.3d 1144, 1147 (9th Cir. 1999).
§13-3553	Sexual Exploitation of a Minor	CAT NOT an AGG FEL INA § 101(a)(43)(I) Statute is not divisible. <i>See RAJI</i> § 35.53; <i>State v. Jensen</i> , 173 P.3d 1046 (Ariz. Ct. App. 2008) (“receiving” and “possessing” are separate acts either of which violates statute providing that defendant commit sexual exploitation for the purpose of transporting, <i>exhibiting</i> , receiving, selling, purchasing, electronically transmitting, possessing or <i>exchanging</i> any visual depiction...). However, §13-3553(A)(1) is broad than the generic definition as it covers behavior that does not affect interstate commerce.	CAT a CIMT See §13-3552 box above.	MCA CHILD ABUSE <i>See also Matter of Rodriguez-Rodriguez</i> , 22 I&N Dec. 991 (BIA 1999) (sexual exploitation crimes are crimes of child abuse for the purposes of 237(a)(2)(E)).

		<i>See State v. Long</i> , 83 P.3d 618 (Ariz. Ct. App. 2004) (defendant possessed CD and prosecuted for recording the victim); <i>Aguilar-Turcios v. Holder</i> , 740 F.3d 1294, 1300 (9th Cir. 2014). § 13-3553(A)(2) is also broader, as it covers exhibition or exchange of the materials, and AZ realistically prosecutes these offenses as well, <i>State v. Valdez</i> , 894 P.2d 708 (Ariz. Ct. App. 1994).		
§13-3554	Luring a Minor for Sexual Exploitation	CAT NOT an AGG FEL INA § 101(a)(43)(I) Generic definition requires “defendant’s conduct to involve a visual depiction of a minor engaging in sexually explicit conduct.” <i>Aguilar-Turcios v. Holder</i> , 740 F.3d 1294, 1300 (9th Cir. 2014)	CAT a CIMT See §13-3552 box above	MCA CHILD ABUSE See § 13-3552 box above.
FAMILY OFFENSES				
§13-3601	Domestic Violence	See ARS § 13-1204 box	MCA a CIMT If 1203(A)(1) only where grave resultant harm, if 1203(A)(2) then CAT a CIMT, if 1203(A)(3) then not a CIMT. <i>See Leal v. Holder</i> .	DV
§13-3606	Bigamy	NO	NO	NO
§13-3607	Marrying Spouse of Another	NO	NO	NO
§13-3608	Incest	NO	NO	NO
§13-3610	Abandonment of Spouse	NO	NO	NO
§13-3611	Refusal or Neglect to Provide for Spouse	NO	NO	NO

§13-3613	Contributing to Delinquency and Dependency	NO	NO	NO
§13-3619	Permitting life, health or morals of minor to be imperiled by neglect, abuse or immoral associations	NO	NO	NO
§13-3621	Hire or use of Child under 16 for Public Vocation	NO	NO	NO
§13-3622	Furnishing of Tobacco to a Minor	NO	NO	NO
§13-3623	Child or Vulnerable Adult Abuse	<p>MCA an AF</p> <p>Note that minimum state of mind for conviction is criminal negligence, but it is an element of the offense. RAJI §36.23A-B.</p>	<p>MCA a CIMT</p> <p>Criminal negligence cannot be considered a CIMT, regardless of harm caused. Reckless requires greater harm than intentional conduct to be a CIMT. <i>Leal</i>.</p> <p>The term “endanger” in the statute, “encompass[es] even ‘potential harm.’” <i>State v. Nereim</i>, 317 P.3d 646, 651 (Ct. App. 2014), and therefore moral turpitude would not inhere. However, endangerment is only one alternative element, see RAJI §36.23A-B, and other forms of harm would qualify as a CIMT.</p>	<p>§13-3623(A) is CAT CHILD ABUSE</p> <p>§13-3623(B) is NOT</p> <p>(B) only requires a possibility, but not a probability, of harm, which is not enough to be a crime of child abuse. <i>See Matter of Mendoza Osorio</i>, 26 I&N 703 (BIA 2016)</p>
MISC. OFFENSES				
§13-3701	Unlawful use of Food Stamps or Authorizations to Purchase	NO	NO	NO
§13-3702	Defacing or Damaging Petroglyphs,	NO	NO	NO

	Pictographs, Caves or Caverns			
§13-3702.01	Excavating Certain Sites	NO	NO	NO
§13-3703	Abuse of Venerated Objects	NO	NO	NO
§13-3704	Adding Poison or Other Harmful Substance to Food, Drink or Medicine	NO	NO	NO
§13-3705	Unlawful Copying or Sale of Sounds or Images from Recording Devises	NO	NO	NO
§13-3706	Failure to Procure or Exhibit a Business License	NO	NO	NO
§13-3707	Telecommunicati on Fraud	NO		NO
§13-3709	Obtaining Cable TV Services Fraudulently	NO	NO	NO
§13-3710	Obtaining Subscription TV Services by Fraud	NO	NO	NO
§13-3712	Interruption of or Injury to Cable TV Systems	NO	NO	NO
§13-3713	Consideration for referral of Patient, client or customer	NO	NO	NO
§13-3714	Agg. Or Multiple Violations of Insurance Code	NO	NO	NO
§13-3715	Unauthorized Manufacture, Duplication, use	NO	NO	NO

	or possession of key to a public building			
§13-3716	Notice of Conviction of Dangerous Crime Against Children or Child Abuse	NO	NO	NO
§13-3717	Unlawful Subleasing of Motor Vehicle	NO	NO	NO
§13-3718	Sale of Ticket in Excess of Regular Price	NO	NO	NO
§13-3720	Dropping Objects from Overpass	NO	NO	NO
§13-3721	Tattoos, Minors	NO	NO	NO
§13-4702	Conducting a Chop Shop	NO	NO	NO
TRAFFIC OFFENSES				
§28-622.01	Unlawful Flight from Pursuing Law Enforcement Vehicle	CAT NOT an AGG FEL COV No element of driving recklessly or use of force. <i>See generally, State v. Fogarty</i> , 871 P.2d 717 (Ariz. Ct. App. 1993).	CAT NOT CIMT No requisite scienter	NO
§28-661	Leaving Scene of Accident Involving Injury or Death	■	(b) (5) ■ ■ ■	■
§28-1381	Driving or Actual Physical Control While Under the Influence	NO	NO	NO

§28-1382	Driving or Actual Physical Control While Under the Extreme Influence of Intoxicating Liquor	NO	NO	NO
§28-1383	Agg. Driving or Actual Physical Control While Under the Influence	<p>(b) (5)</p> <p>See <i>Matter of Ramos</i>, 23 I&N Dec. 336 (BIA 2002) (en banc); <i>Hernandez-Aquino v. Ashcroft</i>, 48 F.App'x 240, 241 (9th Cir. Oct. 2, 2002).</p>	<p>(b) (5)</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>

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